

RLI Insurance Co. v. Nexus Services, Inc., 5:18CV66, 8/10/21

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

RLI INSURANCE COMPANY, CIVIL CASE NO.: 5:18CV66
AUGUST 10, 2021, 9:44 A.M.
MOTIONS HEARING
Plaintiff, VOLUME I OF I
vs.

NEXUS SERVICES, INC., Before:
HONORABLE MICHAEL F. URBANSKI
UNITED STATES DISTRICT JUDGE
Defendant. WESTERN DISTRICT OF VIRGINIA

APPEARANCES:

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1 (Proceedings commenced, 9:44 a.m.)

2 THE COURT: Ask the clerk to call the case.

3 THE CLERK: Yes, Your Honor. We have *RLI Insurance*
4 *versus Nexus Services, Inc.*, Civil Action Number 5:18CV66, for
5 a motions hearing.

6 THE COURT: Okay. Good morning. Let me take care of
7 a housekeeping matter first. First is, last week, because of
8 the spread of the delta variant of the coronavirus, the Court
9 entered a standing order requiring all persons entering federal
10 courthouses in the Western District, consistent with CDC
11 guidance, to wear masks. I hated doing it. I just hated doing
12 it, but that is what was consistent with CDC guidance, what was
13 consistent with what was coming out of the executive branch,
14 consistent with what our local health folks indicated. And the
15 reason why I did it is because the CDC guidance recommended
16 masks for vaccinated and unvaccinated people indoors in areas
17 where the transmission rate on the CDC tracker was substantial
18 or high. Virtually every county in the Western District of
19 Virginia is either substantial or high, even as of yesterday.
20 So what I'd like to do this morning is I will allow counsel,
21 while you're speaking, to remove your mask; otherwise, I'd like
22 everybody to -- and witnesses, to the extent we're going to
23 have any witnesses, may remove your mask while testifying. But
24 other than that, I need everybody to keep your masks on, okay?
25 All right. Sorry for that. I wish we all were in a different

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1 place, but we are where we are.

2 You know, when I set this hearing for today, August
3 the 10th, on the conference call we had in July, I was a little
4 bit dismayed by the fact that at the very last minute RLI had
5 filed a motion, and that we -- I think that was the motion
6 under Rule 66 that was filed on or about the 15th of -- I think
7 around the 15th of July. I can't remember. And then -- and so
8 we had to give everybody a chance to respond, and then we set
9 this in-person hearing today. I think I was a little dismayed,
10 too, because neither Mr. Shoreman nor Mr. Williams appeared on
11 that hearing, and we have this outstanding motion for
12 substitution of counsel, which has got to be, I don't know --
13 well, it's at least the third, maybe the fourth motion for
14 substitution of counsel in this case. And then this morning,
15 7:38 this morning, we get a new motion filed by Nexus seeking
16 sanctions against counsel for RLI. I just don't know what the
17 parties expect of the Court. When I have a hearing scheduled,
18 one would think that you all would give the Court the courtesy
19 of filing something so that I could have a chance to read it.
20 This morning at 7:38 when this thing was docketed, I was in the
21 car on Interstate 81. And I have glanced through it, but I
22 certainly haven't had a chance to peruse it.

23 In any event, this morning's motion appears to be
24 more of the same. Since this case began, it has been nothing
25 but misdirection and a shell game by Nexus Services, Inc. They

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1 have taken one position over another position, only to abandon
2 it. They have hired one lawyer who would represent one thing,
3 only to abandon that lawyer; then hire another lawyer who would
4 represent one thing. They have said over and over, Oh, we're
5 changing our financial system. We're going to get our books
6 and records in order next month, or we're going to do this next
7 month, or we're going to do this next week. We are now more
8 than three years into this litigation, and the representations
9 continue and continue and continue. But I indicated last month
10 that this was truly -- the Court had -- with good reason, it
11 has been since October 23rd, 2020 that this Court entered an
12 order directing Nexus Services, Inc. to deposit the collateral
13 security required by the contract, and to make the additional
14 deposits of collateral security consistent with the contract
15 based on notices to deliver issued by the Department of
16 Homeland Security. October 23rd, 2020. Nexus sought to stay
17 that order pending appeal. The Court denied it. Nexus sought
18 to appeal that stay to the Fourth Circuit Court of Appeals, and
19 the Fourth Circuit Court of Appeals denied it. A court order
20 was entered in this case based on the reasoning set out in my
21 order last October 23rd, 2020, to the best of my ability, based
22 on the legal positions of the parties and what I thought was
23 required.

24 And here we are, August the 10th, 2021, with Nexus
25 not having come anywhere near compliance with the Court's

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1 order. A court order is not a request; it's an order. And I
2 have been very patient with Nexus. Remember what happened last
3 fall? We had motions hearings on the cross motions for summary
4 judgment in the summertime, maybe as late as into September. I
5 lose track with the pandemic. And even then Nexus says, Give
6 us a chance to work it out. Give us a chance to work it out.
7 And I did. I did. I gave the parties a chance to work it out.
8 And I said, If you can't resolve this by October 23rd, I'm
9 going to enter a ruling. And the Court did what the Court said
10 it was going to do and entered a ruling that day, having given
11 the parties every opportunity to try to make -- craft a
12 business solution here to a business problem. That's what this
13 is, a business problem. It didn't work. I gave everybody a
14 chance. Told you that I was going to enter a ruling then, and
15 I did.

16 I understand that this matter has been briefed at the
17 Fourth Circuit, but no argument has been set. I checked as
18 late as yesterday. And of course I can't undo what I did on
19 October 23rd, 2020. The law doesn't allow me to do that. But
20 what I can do is take those collateral steps, those steps
21 necessary to enforce the judgment. And that's where we are
22 nine months later. More promises. More promises.

23 I even went the extra mile this spring in
24 reappointing Greg St. Ours, Special Master. And the Court is
25 wholly in his debt for the work that he has done, because

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1 throughout this case, this case has consisted of nothing but
2 RLI saying X and Nexus saying not X; RLI saying, We haven't
3 been paid and Nexus saying, Oh, we've paid them; RLI saying,
4 Oh, we haven't had full access to the books and records and
5 Nexus saying, Oh, we've given them to them. During the course
6 of the litigation prior to the judgment, I had the magistrate
7 judge, Judge Hoppe, deeply involved in trying to assess the
8 status of compliance with the Court's preliminary injunction
9 orders. Remember, I ordered things years ago in this case.
10 And there were motions for sanctions. I maybe even granted
11 one. And so I gave Nexus another opportunity to comply with
12 the Court's order by appointing a Special Master to allow the
13 Special Master to give me information as to the status of the
14 compliance with the court order. And here we are.

15 This case has had a long history of accusations by
16 one counsel against another counsel, most recently an
17 accusation filed by Nexus Services against Mr. Harris and the
18 folks at RLI. The history of this litigation from my
19 perspective reflects nothing but deception, misdirection,
20 hiding the ball, and a shell game on behalf of Nexus Services,
21 Inc. and its entities. Remember when we first started? Oh,
22 Nexus by Libre and Homes by Nexus had nothing to do with Nexus
23 Services, Inc. You can't have access to those books and
24 records. And I bought that for a while until Nexus admitted
25 that they are controlled by them.

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1 We sit in the United States District Court for the
2 Western District of Virginia, Harrisonburg Division, on a
3 motion by RLI to appoint a receiver, or in the alternative to
4 appoint a third-party administrator under Rule 66 to ask Nexus
5 to do what I just can't believe it hasn't done; and that is for
6 nine months not complied with a federal court order. So that's
7 the framework we have this morning.

8 This case is at the Court of Appeals. Nexus is not
9 satisfied with the rulings of this Court. And I understand.
10 Everybody has a right to appeal. Its recourse is to ask the
11 Court of Appeals, as they have done, to overturn my ruling.
12 Its recourse is not to ignore the orders of this Court. Our
13 country is founded on a rule of law, and the rule of law will
14 be enforced.

15 Okay. With that background, the first thing that I
16 want to take up is there is a motion pending for substitution
17 of counsel by Nexus Services, Inc. And I believe I have
18 Mr. Shoreman and Mr. Williams, who seek to be relieved as
19 counsel of record in this case. And I'd like -- who are here
20 by Zoom. And I'd like to hear from Mr. Williams and
21 Mr. Shoreman on their motion. I would like to then hear from
22 counsel for Nexus, and then I will hear from counsel for RLI.
23 I am very reluctant to -- given the long litigation history in
24 this case, I am very reluctant to relieve Mr. Williams and
25 Mr. Shoreman of their obligations as counsel of record in this

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1 case, particularly given that as of yesterday afternoon, the
2 Court determined they were still counsel of record for Nexus
3 Services, Inc. at the Fourth Circuit Court of Appeals.

4 So I'd like to hear what Mr. Williams and
5 Mr. Shoreman have to say. The Court obviously doesn't consider
6 this motion in a vacuum. It considers it in the fact that
7 we've had first McGuireWoods. Then there was a firm out of --
8 another firm out of D.C. and Richmond that I now understand is
9 in huge litigation with Nexus Services, Inc. Then there was
10 Mr. Kowalczyk. And Mr. Williams has been along for a long
11 time. Mr. Shoreman came in a little later on after Tony Troy
12 and his firm stepped out. So with all that, I want to hear
13 what Mr. Williams and Mr. Shoreman have to say as to the need
14 for them to be allowed to withdraw, and then we'll take up the
15 other motions.

16 Mr. Williams, let's hear from you first. Good
17 morning, sir.

18 MR. WILLIAMS: Good morning, Honorable Judge
19 Urbanski. The first thing I'd like to start off with --

20 THE COURT: I'm sorry, Mr. Williams.

21 Thank you, Amanda.

22 There's something else I want to say.

23 MR. WILLIAMS: Oh, okay.

24 THE COURT: And that is this: We have some people on
25 this call -- I have ordered Mr. Donovan, Mr. Moore, and

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1 Mr. Anjin to be here in open court this morning, and they have
2 determined not to show up because they indicate they are not
3 feeling well. I think there are also some people from RLI who
4 are listening in on this call from Illinois. And there is a
5 new lawyer, Ms. Johnson from Texas, who wants to be admitted
6 into this case.

7 I just want to remind everyone who happens to be
8 listening in or appearing by -- listening in on the phone line
9 or on Zoom that it would be a violation of this Court's order
10 for anyone to record or broadcast these proceedings. We have a
11 court reporter who is here taking down these proceedings, and
12 the court reporter will create the official record of these
13 proceedings. The Judicial Conference of the United States
14 prohibits third parties from recording federal judicial
15 proceedings, and that's consistent with the local rules for the
16 United States District Court for the Western District of
17 Virginia. When the pandemic started, I issued a standing order
18 last spring saying, look, we're all going to be here by Zoom
19 and we're going to be here by -- some folks listening in, but
20 no recordings may be made. And so whether you're sitting in
21 this courtroom with your cell phone, or whether you are sitting
22 on Zoom, or whether you are listening in on the phone line, you
23 may not record or broadcast these proceedings. It would be a
24 violation of this Court's order. We can only have one official
25 transcript of this proceeding, and that's why we have an

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1 official court reporter. It's consistent with the Judicial
2 Conference of the United States policy. It's consistent with
3 the standing orders of this Court.

4 In another case unrelated to this one, we had an
5 instance in our district where the media recorded a Western
6 District proceeding and played it on the air, to the dismay of
7 one of my colleagues who was the district judge in that case.
8 So let's not do that, okay? No recordings. It would violate
9 the court order. Thank you for that.

10 Mr. Williams, good morning to you, sir. Nice to see
11 you again. And I'd like to hear from you as to why you believe
12 it would be prudent for the Court to grant your motion to
13 withdraw, sir.

14 MR. WILLIAMS: Good morning, Honorable Judge
15 Urbanski. I want to apologize. I sent an email to the Court
16 about the nonappearance on the last hearing. That's my
17 responsibility. For that, I should have made sure I showed up,
18 or at least confirm for the Court. That being said, as in the
19 motion we said irreconcilable differences with Nexus has
20 occurred.

21 Can you hear me, Your Honor?

22 THE COURT: Yes, I can hear you. I'm looking at a
23 different screen so that I can hear you.

24 MR. WILLIAMS: Okay. So Nexus has secured new
25 counsel. Counsel is extremely competent. At this point in

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1 time, Your Honor, we don't even have any communication with
2 Mike Donovan or Richard Moore or Nexus -- representatives of
3 Nexus. We typically communicate with them through their
4 current counsel. And so we believe that letting us out of the
5 case --

6 THE REPORTER: I'm sorry.

7 THE COURT: Mr. Williams, hold on. The court
8 reporter is indicating she's having an issue. If you could
9 please talk as slow as you can.

10 MR. WILLIAMS: Okay. I'm sorry. At this point I
11 don't believe that we can add anything to the representations
12 of Nexus as far as legal matters are concerned, because they're
13 fully handled by their current counsel; therefore, obviously,
14 we would like to be let out. But Judge Urbanski, you're
15 obviously familiar. If you don't think we should be let out,
16 then we'll stay in.

17 THE COURT: Okay. Mr. Williams, let me ask you this
18 question, if you will: How is it consistent with your claim of
19 irreconcilable differences with Mr. -- with the folks at Nexus
20 that you remain counsel of record at the Fourth Circuit Court
21 of Appeals?

22 MR. WILLIAMS: Well, actually, what we were waiting
23 for was for another substitution of counsel, and we were going
24 to file -- we are filing -- we are filing our withdrawal in
25 that matter, because now my understanding is that they have a

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1 lawyer, Mr. Anderson, has appeared in the Fourth Circuit in
2 order for us to do a substitution of counsel for that also.

3 THE COURT: I did note from looking at the Fourth
4 Circuit's docket yesterday that Mr. Anderson has noted his
5 appearance at the Fourth Circuit.

6 So you anticipate, Mr. Williams, that a substitution
7 of counsel motion is going to be made at the Fourth Circuit as
8 well?

9 MR. WILLIAMS: Yes, Your Honor. And it could be made
10 today.

11 THE COURT: Okay. I have to ask you this next
12 question. Mr. Williams, I've dealt with you for years, right,
13 in this case and in other cases, correct?

14 MR. WILLIAMS: Yes, Your Honor.

15 THE COURT: I don't know the details of it, but in
16 considering this motion I've thought about it, and that is: Is
17 your law firm somehow related to the defendants in this case?

18 MR. WILLIAMS: No, Your Honor. Your Honor, no, it's
19 not. It should have been filed, but the law firm is no longer
20 NDH. NDH has been dissolved. The new law firm (inaudible) --
21 and that should have been filed on record with the Court.

22 THE COURT: I'm sorry, I did not understand you.
23 Could you tell me what the new law firm was again, please?

24 MR. WILLIAMS: HDR. It's no longer NDH. We have no
25 relationship with Nexus.

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1 THE COURT: Okay. I appreciate you answering that
2 question, Mr. Williams.

3 All right. Now, Mr. Williams, based on your
4 understanding and your dealings with these folks at Nexus, do
5 you see any disadvantage to Nexus by the Court allowing you to
6 withdraw in this case?

7 MR. WILLIAMS: I do not, Your Honor. I've spoken to
8 Mr. Anderson. John Shoreman has spoken to him. He is more
9 than capable of handling the matters for Nexus, absolutely more
10 than capable. I don't know Mr. Okay. I've talked to him a
11 couple of times, but I know that -- well, I can't speak on him.
12 I would just submit Mr. Anderson is extremely competent, that I
13 know is more than capable of handling this case.

14 THE COURT: Are you able to tell me the nature of the
15 irreconcilable differences without -- without waiving
16 attorney-client privilege?

17 MR. WILLIAMS: I actually don't believe I can, Your
18 Honor. I think I would end up waiving the privilege.

19 THE COURT: Okay. All right. Mr. Williams, the
20 Court obviously has high regard for you, and I've dealt with
21 you on many cases. You have always been straight with the
22 Court, and I appreciate you appearing here today. I understand
23 you've had some health issues. I hope you're doing okay now.

24 MR. WILLIAMS: I'm doing better. A little slow
25 progress with recovery, but I'm doing much better.

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1 THE COURT: Mr. Shoreman, could I hear from you as to
2 your request to be relieved as counsel in this case, if you
3 will, sir.

4 MR. SHOREMAN: Good morning, Your Honor. Yes, I
5 would just echo what Mr. Williams said. I think at this point
6 neither Mr. Williams nor myself can really be effective on
7 behalf of Nexus, as we really have no communication with the
8 principals. All communications go through counsel. So we're
9 not really in a position to make any representations on behalf
10 of Nexus.

11 Also, I've worked I think mostly with Mr. Anderson to
12 transition this case away. I think he is more than capable of
13 handling the remaining issues in the case. He's also -- as
14 Mr. Williams said, he's also filed in the Fourth Circuit. And
15 both Mr. Williams and I will be withdrawing from that matter.
16 The Fourth Circuit advised us that it would be their preference
17 if a substitute counsel was in the case before our motion to
18 withdraw would be considered, and that was the delay. I just
19 don't believe -- and again, we have stated irreconcilable
20 differences. And I agree with Mr. Williams; it would be
21 inappropriate, prejudicial to our client to disclose those in
22 open court. Of course, we could do that in camera, if Your
23 Honor was interested.

24 THE COURT: Well, Mr. Shoreman, let me tell you,
25 we've spent a lot of time together on this case. And I just

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1 want you to know that the Court holds you in high regard. And
2 I regret that you are moving to withdraw, because you have
3 conducted yourself appropriately, as far as I'm concerned,
4 throughout this litigation, and I have enjoyed working with
5 you.

6 MR. SHOREMAN: Thank you very much, Your Honor.

7 THE COURT: I'm sorry, sir?

8 MR. SHOREMAN: I just wanted to thank the Court and
9 state that I very much have enjoyed appearing before you in
10 this matter.

11 THE COURT: All right. Let's hear from counsel for
12 Nexus Services, Inc. with regard to this motion. And then I'm
13 going to want -- if counsel for Nexus Services, Inc. would
14 please examine your client for the sake of the record --
15 Mr. Donovan or Mr. Moore or Mr. Anjin, whoever is appropriate.
16 I just want on the record the client to as well indicate that
17 they want the Court to grant this motion.

18 Mr. Anderson?

19 MR. ANDERSON: Thank you, Your Honor.

20 THE COURT: Good morning, sir.

21 MR. ANDERSON: Good morning, Your Honor. Carl
22 Anderson for Nexus Services.

23 I would just reiterate from the communications I've
24 had with the principals at Nexus, I can state that there are
25 irreconcilable differences, none of which I am actually privy

M. Donovan - Direct

1 to, but this is what has been communicated to me by the
2 principals there. That is why I was brought in to enter my
3 appearance here, as well as the Fourth Circuit Court of
4 Appeals, the appeal we have pending there. And as I think I
5 relayed to you on the July 15th status hearing, that it was
6 just a matter of being admitted to the bar there and entering
7 my appearance is why there was a delay with that matter.

8 So with that, I would like to call Michael Donovan,
9 if the clerk would like to perhaps swear him in.

10 THE COURT: Yes, absolutely. Let's ask the clerk to
11 swear in Mr. Donovan, please.

12 THE CLERK: Mr. Donovan, are you able to hear me
13 okay?

14 THE WITNESS: I can hear you.

15 THE CLERK: Okay. Great. If you could raise your
16 right hand for me, please.

17 (Whereupon, the witness was sworn.)

18 THE COURT: All right. Let me just ask before we
19 proceed, to assist the court reporter, for those folks who are
20 on the Zoom call who are not speaking -- and that would be
21 everybody but Mr. Donovan -- please mute your Zoom call. I
22 think that will help improve the connection.

23 MICHAEL DONOVAN, DEFENSE WITNESS, SWORN:

24 DIRECT EXAMINATION

25 BY MR. ANDERSON:

M. Donovan - Direct

1 Q Good morning, Mike. Thank you for -- you've heard what
2 John and Mario have said. They've represented you and Nexus
3 Services for several years in this matter. Do you dispute
4 anything that they have said here today?

5 A No. And, in fact, I appreciate and value John and Mario
6 tremendously. They're fine lawyers, and they have done a great
7 job for us, and I appreciate them. But no, I don't dispute
8 anything that they said today.

9 Q And did you object or did you consent to their motions to
10 withdraw as counsel of record in this case?

11 A I consented to the motions. We had -- we've had a
12 significant revenue decline at the company -- as many companies
13 have -- after COVID. And so the infrastructure we had built
14 legally, both to assist internally in issues and also to assist
15 third parties -- we revamped our budget -- was just way too
16 askew from where we were. So the company has taken some hard
17 steps and some difficult steps to streamline what we're
18 spending to make it possible to do more with less. And so,
19 that's what we've done.

20 I respect and admire Mario and John greatly, but did not
21 feel that -- you know, financially I felt like streamlining our
22 operations, hiring an outside general counsel was the right way
23 to go. And that's what we did. We hired Michael Song, and
24 he's been working to staff the cases. There's certainly no
25 hard feelings with me and Mario and John. I hope not. I

M. Donovan - Direct

1 respect the heck out of both of them.

2 MR. ANDERSON: Thank you, Michael.

3 Your Honor, I don't have any further questions.

4 THE WITNESS: Mr. Anderson?

5 MR. ANDERSON: Yes, Mike?

6 THE WITNESS: I don't know if it's appropriate, but I
7 just wanted to say I traveled to the court this morning -- I
8 was on my way to the court this morning. I take the Court's
9 order for me to appear very seriously. As I reported to you,
10 sir, Mr. Anderson, I had a 101.1 fever, and I was concerned
11 about the temperature check, and that's why I raised it to you.
12 But if Your Honor wishes, I'm happy to jump in the car and do
13 the Zoom on the way there and then be there, because I
14 certainly don't want to disrespect the Court.

15 THE COURT: No, I don't want you to jump in the car
16 and come down here. You know, the breakthrough with regard to
17 the delta variant is troubling. That's why we're all wearing
18 masks here. I'm sorry that you've got -- you're running a
19 fever this morning, Mr. Donovan. I understand Mr. Moore and
20 Mr. Anjin are likewise not feeling well. And so I'm happy to
21 accommodate you by Zoom, given the circumstances of this
22 pandemic.

23 Likewise, for example, when counsel for RLI asked if
24 their client could listen in on the public line, normally prior
25 to the pandemic we wouldn't have done that in federal court.

M. Donovan - Direct

1 It just wasn't done. But given the circumstances of the
2 pandemic, I'm happy to allow it. I have no trouble with those
3 who aren't feeling well -- such as you, Mr. Donovan, even
4 though you're ordered to appear here -- to appear via Zoom.
5 And I don't know; there may be some evidence that might be
6 necessary from you or from some of your colleagues. But I hope
7 you feel better. I have no concern with you appearing via
8 Zoom.

9 Okay.

10 THE WITNESS: Thank you, Your Honor. And if I could
11 just point out that Mr. Anjin, his daughter was a positive
12 COVID exposure last week. At the time, although I had worked
13 with Mr. Anjin, I wasn't -- because I've already been -- I was
14 already COVID positive. In fact, I got pneumonia and had a
15 very tough time of it. So I thought, no worries, I've got the
16 vaccine, right? Well, the doctors told me nature's vaccine
17 isn't so reliable. And I was diagnosed with shingles -- which
18 is a horrible thing -- yesterday. So I thought that the fever
19 might be associated with that, but my doctor this morning told
20 me that a fever with shingles is very rare, and that I should
21 go to the doctor and get tested immediately for COVID, which
22 I'm going to do after this hearing.

23 THE COURT: Well, I hope you don't have it, and I
24 hope that you and Mr. Anjin's family and other folks who may be
25 suffering from this dreadful disease do well.

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1 Okay. Mr. Anderson, do you have anything else that
2 you want to say on this motion?

3 MR. ANDERSON: No, Your Honor, just that we fully
4 support it.

5 THE COURT: Let me see whether the folks from RLI
6 have anything they want to say about the motion of substitution
7 of counsel.

8 MS. KATSANTONIS: Thank you, Your Honor.

9 Your Honor, the point that I would just add that the
10 Court brought up in the beginning is since the start of these
11 proceedings, it's been a shifting of counsel over and over and
12 over. And that shifting has also resulted in a change of
13 representations, as well as delays. So those are the main
14 focus of our concerns. I will note that since these
15 enforcement proceedings, I will note that Mr. Shoreman has been
16 involved in the case since March of 2019 from our records, and
17 Mr. Williams since February of 2020. They were both heavily
18 involved in these enforcement proceedings. I will note that
19 there is representations, for example, in ECF 618 that was
20 filed regarding representations to the Court as to the extent
21 of Nexus's compliance with the court order. And both
22 Mr. Williams and Mr. Shoreman were involved with the Special
23 Master proceedings. And it was not until June 15th that they
24 moved to withdraw.

25 So those are kind of our concerns, Your Honor, at

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1 this point in time. So we would oppose the withdrawal.

2 THE COURT: Mr. Anderson, anything you want to say
3 about the RLI response, sir?

4 MR. ANDERSON: I guess I would just simply add, Your
5 Honor, that since coming on board, I believe I have brought
6 with the new representation a renewed focus to get Nexus into
7 compliance. That's not to disparage the prior counsel in any
8 way. I only state that to suggest that new life and new blood
9 and a new approach to taking Nexus -- which we're prepared to
10 show today -- to showcase how well they've been doing with the
11 compliance with the Special Master in working through that
12 process and getting Nexus back on the right track. So while it
13 may be said that adding a new counsel may delay things, I think
14 the opposite is true. And I believe not just the principals at
15 Nexus would say that, but I believe a renewed focus on the
16 compliance with the Special Master is what you're going to hear
17 today.

18 THE COURT: Thank you, Mr. Anderson.

19 All right. The Court is taking the motion for
20 substitution of counsel under advisement. I am inclined to
21 grant it, and I will grant it once a motion for substitution of
22 counsel is made at the Fourth Circuit Court of Appeals. Right
23 now it seems to me inconsistent that Mr. Williams and
24 Mr. Shoreman are -- remain counsel at the Court of Appeals
25 while maintaining to this Court they have irreconcilable

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1 differences with the folks at Nexus.

2 So once -- I would like you, Mr. Anderson, to give me
3 a status update on the status of representation, whether a
4 motion of substitution is filed at the Fourth Circuit. Once
5 that is filed, the Court will grant the motion to allow
6 Mr. Williams and Mr. Shoreman to be relieved as counsel of
7 record in this case for Nexus Services, although I'm -- you
8 know, I haven't been in this litigation business for 35-plus
9 years -- it always raises red flags and warning bells when
10 there's substitution after substitution after substitution.
11 And while I'm reluctant to do it, I do understand that from
12 time to time these things happen. And I will -- once a
13 consistent motion has been made at the Fourth Circuit Court of
14 Appeals, I'll grant the motion to allow Mr. Shoreman and
15 Mr. Williams to be relieved as counsel of record in this case.

16 Now, with that, Mr. Anderson, there was a motion
17 filed this morning with regards to a new person, Ms. Johnson,
18 from Texas. Would you like to say anything about that?

19 MR. ANDERSON: Yes, Your Honor. Thank you. It's my
20 understanding that Ms. Johnson has been employed as an outside
21 counsel for Nexus Services for several years. She has helped
22 them with any of their immigration bond work, and so she's
23 intimately familiar with their business practices. And we
24 thought that, again, having somebody who has had a long history
25 with Nexus would be able to add some depth and robustness to

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1 our legal team, and to get us into compliance so that we can
2 better understand what we need to do in order to prove those
3 things to you.

4 I don't want to take Ms. Johnson's thunder. She
5 might be able to address the Court, if you so please.

6 THE COURT: Ms. Johnson -- thank you, Mr. Anderson.

7 Ms. Johnson, what has your experience and practice of
8 law been? It looks like your law firm does a lot of family law
9 work.

10 MS. JOHNSON: It does, Your Honor, but I am primarily
11 focused on trial work, Your Honor. I am the trial litigation
12 partner here. I spend about 90 percent of my practice in the
13 courtroom. Also, I focus a significant amount to the purposes
14 of immigration with regard to recouping funds on bond to the
15 Board of Immigration Appeals under I Form 290B. That is not
16 something that I advertise, Your Honor. It's something that I
17 have done for Nexus in the years that I've known Nexus. And I
18 am intimately -- I'm intimately acquainted, Your Honor, with
19 how those processes work. I can provide a unique perspective
20 to this Court with regards to a lot of the work for Nexus in
21 indemnifying securities and the relief that we seek with the
22 Department of Homeland Security and the Board of Immigration
23 Appeals.

24 THE COURT: Thank you, Ms. Johnson. Is there any
25 opposition to the motion to allow Ms. Johnson to appear *pro hac*

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1 vice in this case?

2 MS. KATSANTONIS: Your Honor, I would say to the
3 extent -- only to the extent it would delay proceedings, we
4 would object. I have -- I just saw this motion this morning.
5 I understand -- I believe Ms. Johnson used to be a Nexus
6 employee, I believe. I need to confirm that. I haven't seen
7 the papers. I don't know why the immigration issue would be
8 something we're going to address forthwith. But, you know, our
9 biggest issue is getting the order, you know, for enforcement
10 in these proceedings and not having delays.

11 THE COURT: Mr. Anderson, do you know whether
12 Ms. Johnson is going to be moving to be added as counsel of
13 record at the Fourth Circuit or not?

14 MR. ANDERSON: Your Honor, I don't think there is any
15 current plans to have that. I'll be the only counsel of
16 record.

17 THE COURT: Okay. Ms. Johnson, did you want to say
18 something else? I saw you raise your hand.

19 MS. JOHNSON: Yes, Your Honor. Just in response to
20 opposing counsel, the knowledge that I have is very particular
21 to a lot of why we're here today. My understanding of this
22 area of the law qualifies me uniquely for these purposes, as I
23 understand the nature of the invoices with the surety. And I
24 understand also from Nexus's perspective -- and I can relate
25 such -- the relief that the Board of Immigration Appeals offers

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1 during an indemnifier. That has perhaps been overlooked and
2 has created an atmosphere of very robust litigation, Your
3 Honor. And I believe that my presence will help to minimize
4 some of this, will help to streamline some of this, and will
5 help to bring a unique understanding to some of this, and how
6 we got in the position that we are, and how we can cure it.

7 THE COURT: All right. The Court will grant the
8 motion. Welcome, Ms. Johnson, to -- as counsel of record for
9 Nexus Services in this case.

10 You know, I am reminded, though, as I see Ms. Johnson
11 and she talks about her experience with immigration work, I'm
12 reminded of an early hearing that we had in Roanoke in this
13 case back -- maybe a preliminary injunction hearing where we
14 heard testimony from another lawyer who was doing immigration
15 work from Nexus Services, Inc. And that woman is
16 Ms. Sherman-Stoltz, who sat on the witness stand and testified
17 about these kind of matters, and sought to bring the Court some
18 knowledge with immigration work. And, of course, now I am
19 presiding over a lawsuit between Nexus Services, Inc. and
20 Ms. Sherman-Stoltz over legal fees.

21 So I hope that isn't your experience, Ms. Johnson, in
22 this case.

23 MS. JOHNSON: It is not, Your Honor. I have known
24 Nexus for a number of years, and I've never found them to be
25 anything but genuine in my experience.

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1 THE COURT: Well, I hope that it doesn't come to
2 that.

3 All right. We've gotten those two housekeeping
4 matters out of the way. I think I want to hear from RLI on --
5 as to just exactly what you want the Court to do at this point.
6 And to the extent consistent with that, I would like to hear --
7 if you would like to present it, or if you want me to inquire
8 from the Special Master as to the status -- maybe what we ought
9 to do is hear from the Special Master first. I've gotten his
10 four reports now that just came in as to the status of
11 compliance with the Court's orders, allow each side to ask him
12 questions, and then hear -- does either side have any other
13 evidence to put on other than the Special Master?

14 Ms. Katsantonis?

15 MS. KATSANTONIS: Your Honor, to the extent -- to the
16 extent we're not in agreement with regard -- and again, I think
17 for the purposes of this hearing, it doesn't matter. The
18 Special Master says there is about 100,000 that was paid over
19 the last ten months. We have now some evidence of 107, to the
20 extent there is no dispute between the parties. But we do have
21 Mr. Grycz here available from RLI who can testify exactly what
22 we've received, and to, you know, address any questions Nexus
23 may have as to what we have received.

24 And then we also have Mr. Peroutka here, who is
25 available with regard to -- Your Honor will recall Mr. Peroutka

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1 from the previous hearings. He participated in some of the
2 database reviews. He certainly can testify with regard to the
3 inadequacy of the books and records productions, as well as the
4 inability to do his analysis of risk as required under the
5 order.

6 THE COURT: Okay. I'm happy to hear whatever
7 evidence that you want to put on.

8 Does Nexus anticipate putting on any evidence in this
9 case, Mr. Anderson?

10 MR. ANDERSON: Yes, Your Honor. We have our CFO,
11 Rebecca Wells, here.

12 THE COURT: Okay. Yeah, and I think I saw her name
13 mentioned maybe in one of Mr. St. Ours's reports, I think.

14 Okay. What about the Court's suggestion to hear what
15 Mr. St. Ours has to say about the areas of compliance, give you
16 all a chance to ask him any questions, and then we can let him
17 go, and then hear what other evidence that you all want to
18 present. Does that suit you all procedurally?

19 MR. ANDERSON: Yes, Your Honor.

20 MS. KATSANTONIS: Yes.

21 THE COURT: Okay. Mr. St. Ours, why don't you come
22 on up and be sworn, if you will, please.

23 (Whereupon, the witness was sworn.)

24 THE COURT: Mr. St. Ours, would you -- I don't mind
25 you being at the -- you have a beard. I didn't see it under

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1 your mask. It looks good on you, Mr. St. Ours.

2 SPECIAL MASTER: Fourth time, and Debby has liked it
3 all four times. This time she will not let me -- well, she
4 didn't want me to shave it off the other three times, but she's
5 made it pretty clear it stays.

6 THE COURT: Well, it's nice to see you again,
7 Mr. St. Ours, this time with a beard.

8 Would you like to testify from the witness box or do
9 you prefer to be from the podium? What would the parties
10 prefer?

11 Ms. Katsantonis?

12 MS. KATSANTONIS: Your Honor, whatever Mr. St. Ours
13 is comfortable with.

14 THE COURT: Mr. Anderson?

15 MR. ANDERSON: That's just fine with us.

16 THE COURT: Mr. St. Ours, does it suit you from right
17 there?

18 SPECIAL MASTER: Yes, sir.

19 THE COURT: What I'd like you to do is go over the
20 status of the compliance based on your work as Special Master
21 and give the Court an update. I have read your four reports.
22 You don't need to go through them chapter and verse. But if
23 you would, give me an overview, sir.

24 SPECIAL MASTER: Yes, sir, Your Honor.

25 As to Section A -- A.1 and A.2 -- A.1 being the level

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1 of security of 2.4 million, A.2 being the additional security,
2 and I believe as RLI accounts it, I think it's in the
3 neighborhood of 440,000. It's in the report. It's somewhere
4 in that report. And then of course there is other payments
5 that have come in as well. And that's noted --

6 THE COURT: They said -- 442,500 is what their brief
7 said.

8 SPECIAL MASTER: 442,500.

9 MS. KATSANTONIS: It's 447,500 as of today.

10 SPECIAL MASTER: Thank you. Hang on, Your Honor. I
11 want to flip to that page.

12 THE COURT: So let's start with the money aspect of
13 this, the collateral security, the 2.4 million that was
14 required to be deposited on December 1, and then the collateral
15 security required on an ongoing basis for the breach bonds for
16 which the government has issued a notice to deliver.

17 SPECIAL MASTER: Yes. The payments to date confirmed
18 are -- by RLI are \$100,447 towards both of those obligations.
19 There is an additional 72,973 -- and that's been sent within
20 the last four days -- which are not confirmed by RLI. And then
21 in addition, Your Honor, there is 44,092 -- let me step back a
22 minute.

23 I've learned of these payments because I'm copied on
24 an email that come not every day, but often days. It just
25 says -- confirm an RLI claimed payment. So that's where I get

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1 these numbers, and I like to get them confirmed. And I started
2 getting these back in -- I believe it predated the July 15 -- I
3 have them -- the July 15 hearing, they started coming in. In
4 fact, it could have been June, but I don't think so. I think
5 it started in July.

6 So those 44,920 [sic] -- actually, I see those were
7 on July 19, but they reflected payments that were earlier in
8 time. They are simply not accounted for. And my understanding
9 is, Your Honor, there was an attempt to make these payments.
10 These are payments that predate July 15. But through whatever
11 means it was coming, it just -- RLI doesn't have them. And I'm
12 not -- an effort to make a payment. RLI doesn't have a
13 payment.

14 In addition, some \$50,000 were paid. And I think
15 that's worth noting, because I want to go back to something
16 before I leave Section A. Those were -- and I learned this
17 Sunday night -- they were acknowledged by RLI, but they were
18 credited towards breach bonds, which is -- that's fine. Wasn't
19 under Section A. And that's part of that -- you'll see in
20 footnote 2 over the course of -- since February 16, 2021, in
21 addition to the amounts I have already stated to you, Your
22 Honor, Nexus has paid RLI \$251,500. That includes those
23 \$50,000 in payments that were relatively recent, just in the
24 last couple -- just in -- I believe it was in early July. So
25 we have -- I mean, I can account for -- as to Section A.1,

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1 100,447 confirmed; 72,973 within the last four days that I do
2 not have confirmed; and 44,092 that were -- that for whatever
3 reason didn't get through. And they are the original --
4 they're -- I shouldn't say the original, because there were
5 other payments like a 2,500 and a 2,000.

6 As an officer of the court, I want to express a
7 frustration -- and I think it would be a frustration. I'm the
8 eyes and ears of the Court in this role. Starting about two
9 weeks ago, here I've got this information of some 60,000,
10 100,000 of payments. And I'm asking the parties, Hey, I want
11 to get my Section A report correct. I did several emails. I
12 reminded them on at least two of the phone calls. I sent an
13 email out at midday on the 5th. I've got a deadline of
14 August 6 to file this report. And in that email I account for
15 60,000 -- some \$60,000 here. I should probably try to be -- I
16 believe I have it here. I'm just -- I'm just trying to make an
17 accurate report. It was about 60,000 in one category and the
18 other roughly -- I want to say about 90,000. And that includes
19 that 50,000. I want to know, Hey, what box do I put it in?
20 Did it come in? Did it go through? Was it not sent? And then
21 I'm doing my report on the very next day. I've got to get it
22 done. I realized earlier on in the day I've got to split this
23 into three reports. There's no way I can make the deadline,
24 but I'll get Section A out. So I get it out, and that's fine.
25 Now, I want to go back. It's August 1. RLI files a

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1 motion, a reply in support of a new request for appointment of
2 a third party, and represents that as of then it had received
3 \$4,500 towards Section A.

4 THE COURT: I thought it was like 4,250.

5 SPECIAL MASTER: Pardon me?

6 THE COURT: I thought it was 4,250.

7 SPECIAL MASTER: I've got 4,500.

8 THE COURT: Okay. No, no, no. 4,500 they got on
9 May 27. I got that. Okay. Go ahead.

10 SPECIAL MASTER: And then another report is filed on
11 the -- I believe it was the 1st. I have it here. I'm sorry, I
12 can't put my finger on it right off. The August one -- oh, it
13 says -- we've got the -- we have the 4,500 and now we have an
14 additional \$9,282.60 on the August 1 report.

15 In the course of receiving an email -- I'll just cut
16 to the chase -- at 5:36 p.m. on the 6th -- this is after I
17 filed my part A -- that's fine -- my Section A -- I then get an
18 accounting from RLI. I see a lot of numbers, and they don't
19 square up. And at least I need an explanation. Great. I
20 realize I need to file an amended report. The next morning I
21 send a detailed email, 12 questions. I really take my time.
22 Sunday night -- and I realize it's a weekend -- Sunday night I
23 get a reply and the questions are answered; and hence, I
24 generate. But I think it's noteworthy to the Court that in the
25 course of those emails I learn that RLI received more than

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1 4,500 and another 9,000--some as of August 1. Prior to the
2 15th, they had received \$50,825. Now, I didn't account for
3 what it received from that point through August 1. But again,
4 you can see there's an additional 49,622.

5 So I'm just -- I guess can't help -- I put myself in
6 the chair of the Court. And I'm just thinking -- by the way,
7 I'm not saying there's a misrepresentation. You know, the
8 focus of the August 1 was payments only since July 15th. But
9 here I got emails -- I want to know -- I don't care if the
10 first one was made on December 20, 2020; I want to know about
11 Section A. And so -- but in other words, I'm not getting --
12 I'm not getting a response. I'm not getting the whole story.
13 So --

14 THE COURT: Who are you not getting the whole story
15 from?

16 SPECIAL MASTER: Well, I'm not -- here I've got --
17 you know, I have this record of this 442,000. Fine. That's in
18 my report. That's the kind of record I want. There's an
19 accounting of what hasn't been paid that falls under A.2. But
20 what I'm not getting is an up-to-date accounting of what's come
21 in under A.1 or A.2. And that 442 is an A.2. Okay, that's
22 fine. It's -- RLI decided how to credit. And then I also
23 learned -- I had been wanting to know: What about these
24 \$50,000? And I learn in that Friday evening email, it's
25 finally acknowledged -- that's the first time it's

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1 acknowledged -- and it is in the report that shows the
2 payments -- if you recall, there was an Exhibit 10 to the
3 August 1 -- August 1 filing. So that would be I believe
4 709-10. And I don't have it in front of me, but I believe it's
5 ECF 709-10. And that has the 440-some thousand. And then
6 there is also 709, I believe it's 11, and that shows the breach
7 bonds. So now I'm learning that the last two items -- and by
8 the way, even Friday evening I don't know where to put the 50.
9 I just know that RLI has counted it towards breach bonds. And
10 it's Sunday night I find out that the last two items on
11 709-11 -- they're a 20,000 and a 30,000 -- and by the way,
12 correctly credited. Don't get me wrong. Nobody did anything
13 wrong. It's just a frustration.

14 So I digressed. If it's okay with the Court, we'll
15 move on to Section C.1 and C.2.

16 THE COURT: Do you have a clear sense for how much
17 money has been paid?

18 SPECIAL MASTER: Well, I know that -- I have
19 confirmation of -- let me get my report. I want to get it --
20 \$100,447 as of Sunday night was acknowledged by RLI. And I
21 believe, because the emails all look the same, that, okay, the
22 catching up has -- I presume that there will be an
23 acknowledgment of an additional sum that could be as much as
24 \$72,973 for payments made on I believe the 6th -- maybe the
25 5th, the 6th, and the 9th, or at least reflected in the email.

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1 They may have been paid earlier. I'm not sure about timing,
2 because these emails, they're just form emails. They're coming
3 from whatever the platform is that's sending payments, okay?
4 And then again, I don't have -- I do not know what happened to
5 the 44,902 -- 44,092, which is at the last page of my report.

6 THE COURT: All right. Mr. St. Ours, your
7 frustration is well appreciated. I've had it for three years
8 in this case, frustrated with really getting two very different
9 pictures of things from each side. I get an A and a not A. I
10 get a B and a not B. One of the reasons I appointed the
11 Special Master was to help me cut through the frustration and
12 to get a clear picture of what has happened. And I'm sorry
13 that you have experienced that frustration. The Court
14 appreciates your diligent work.

15 SPECIAL MASTER: Thank you. Let's move to Section
16 C.1 and C.2. As previously reported --

17 THE COURT: This is information on bonded
18 individuals. C.1 is folks for whom a notice to deliver was
19 issued, and C.2 was for RLI bonded individuals for whom a
20 notice to deliver was not issued.

21 SPECIAL MASTER: And C1 also included Capsule.

22 THE COURT: Right.

23 SPECIAL MASTER: Because Capsule is what accounts for
24 both communications -- it opens up the -- it's the program
25 participant. It's effectively the filing system for the

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1 program participants.

2 THE COURT: Right. And you know, I think the
3 parties -- maybe Mr. Anderson won't appreciate this, but
4 certainly I know RLI's counsel does -- is this is a smaller set
5 of data than the magistrate judge had ordered on the
6 preliminary injunction by a wide margin, because the magistrate
7 judge had ordered production of non-RLI bonded folks. And I
8 determined in my injunction order that no, I wanted the focus
9 to be on the RLI bonded folks. So this is a much less
10 burdensome amount of information that had previously been
11 ordered.

12 Go ahead, sir.

13 SPECIAL MASTER: As to Capsule's previously-reported
14 substantial components -- and RLI has acknowledged that -- Your
15 Honor, just as an aside, I believe there is -- that as I can
16 reconstruct, you know, it became an issue -- Capsule data was
17 produced daily, but it did not have tags and notes. And as
18 near as I can tell, I don't think it was deliberate, and not
19 only a negligent oversight, I think it was my sense of -- and
20 Mr. Shoreman was involved at that time; Mr. Anderson was not --
21 was it was a -- I saw it as an issue -- or not an issue, but an
22 outside IT consultant working with Nexus -- and I could be
23 wrong in terms of what's being -- you know, you don't take a
24 native and just dump it to a shared drive. There's a process.
25 And the tags and notes are an enhancement, or it's not quite

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1 the same thing. And I'll tell you, Ms. Katsantonis was very
2 good at bringing -- helping my understanding with tags, and I
3 believe Mr. Shoreman as well. I remember Capsule from 2018. I
4 think it was relatively new for him, and she was helpful. On
5 the flip side, it's kind of too bad -- that was an instance it
6 was too bad that IT people weren't talking to one another,
7 because I think it would have been resolved quicker. The
8 bottom line is we got there, and then it took a couple of phone
9 calls and an email to finally get an acknowledgment, but we got
10 it done.

11 The bond-related data, again, Your Honor, you framed
12 it correctly as to the difference between C.1 and C.2. C1 is
13 weekly. But Nexus made the election, hey, we're just going to
14 do all this as daily -- daily productions, daily availability.
15 As I note in the report, there is this RLI new master
16 spreadsheet which Nexus instituted, if my memory is correct, in
17 late fall, early winter of last year. And my recollection is
18 that on one of the calls, Mr. Shoreman noted that Nexus was
19 doing this for its other -- in other words, it's just a part of
20 this. The Court, you've heard it. I've heard it. There is
21 these changes in policies. There is also upgrades in terms of
22 software. This is distinct from that, but consolidation of
23 some form. So, prior spreadsheets -- this is according to
24 Nexus -- bond spreadsheets and books were no longer used.

25 Now, the issue comes down to the RLI new master

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1 spreadsheet has -- is the daily tool that Nexus works with. I
2 don't think anybody disputes that. That's been the
3 representation. But yet there is other data that -- that was
4 captured in the prior records, and it's more if the data was
5 kept -- a given class of data -- for example, bond appeals,
6 where is that? And so the question is: My understanding is
7 what Nexus does -- has in terms of tracking its program
8 participants relative to bond compliance or bond breaches is
9 captured within a spreadsheet, but it's not everything that
10 they would keep -- keep track of as well. And what immediately
11 pops in my head -- and it's noted in my report -- is bond
12 appeals. And by the way, that's also in the second report,
13 Your Honor. So my thinking is, is not to spend any more time
14 on that, but I think that's noteworthy.

15 I don't think the part -- I mean, RLI doesn't know,
16 but I don't understand that there is -- that anybody is having
17 heartburn over disputing that the new RLI master -- it's called
18 a new RLI master spreadsheet -- is, in fact, a tool that's
19 used. I don't understand -- I don't think anybody is harping,
20 but I can't confirm that all data has been produced in that
21 regard.

22 Section C -- Your Honor, if you wish, I'll move on to
23 Section C, and that's principally financial databases.

24 THE COURT: C.3.

25 SPECIAL MASTER: C.3. But it also covers records

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1 that would not be within a database. I note here -- I noticed
2 something about RLI early in Section A, something about Nexus
3 on the flip side. I believe it was the July 15 hearing that we
4 heard about a database called Stamplic and Melio. And
5 apparently, if my memory is correct -- and I believe it was RLI
6 counsel indicated there had been a subpoena to -- it may have
7 been to the CPA firm, Fusion, but I'm not sure. Anyway, they
8 saw a reference or records of these two; and hence, my memory,
9 it was brought up there. And so that was -- that's something
10 that came to the top of my list. We knew about Lightspeed,
11 NetSuite -- the migration to NetSuite -- QuickBooks, of course
12 Capsule. And KPI is not a database. That's a report. That's
13 not a database. And we knew about the other reports.

14 So counsel for Nexus, following July 15, provided a
15 description of the various databases either in use or tried but
16 stopped in the period from approximately October of 2020
17 forward. And that list is in the special report part three.
18 And that's the starting point for this report. And so -- and
19 we have QuickBooks and NetSuite ERP. That's the successor.
20 ERP stands for Enterprise Resource Planning. We have accounts
21 payable tools, and there is Melio. We learned about another
22 database, Airbase, and then of course Stamplic. And, you know,
23 the importance of these is, for one thing, you find out money
24 that's going out, checks. So that's the database.

25 And then you have the customer relations management,

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1 CRM. That's Capsule. And again, they're migrating that to
2 NetSuite. So Capsule is a CRM program, customer relations
3 management; hence, effectively customers. And now they're
4 moving to NetSuite CRM. And by the way, I appreciate the
5 listing. It's just that my thinking was: Where was this
6 listing late April or early May? I can't help but think that,
7 Judge. Again, I'm looking through the eyes of the Court.

8 And then in addition, point of sale, Lightspeed is
9 the point of sale. And again, it's a transactional tool. It's
10 a register of transactions is a great way to look at it. And
11 they tried another one, American Spirit. And American Spirit
12 in particular, Your Honor, for all that maybe other databases
13 might not have been identified, counsel for RLI identified --
14 we started getting the monthly productions in May. So in other
15 words, things happened pretty quickly once the Court appoints,
16 and I have that first phone call or two. And there are
17 shortcomings on the monthly reports -- May, June. But what I'm
18 hearing is -- as to Lightspeed -- is there's this gap, and it's
19 a gap that basically runs from mid fall to I believe -- if my
20 memory is correct -- the end of February of 2021. And so, it's
21 raised. And so, now -- and then we learn in the course of
22 that, that another system was tried. It just wasn't identified
23 by name. And so, I want to say that was identified maybe first
24 in June, but it just wasn't identified, and we don't see a
25 database in the July production. And so -- but then American

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1 Spirit is identified expressly. Don't get me wrong, Judge; a
2 different database used for new employees identified some time
3 back, and it might have been while Mr. Shoreman was still on
4 the calls. It could have been that far back. I'm not sure.
5 But it just wasn't -- it wasn't part of the July -- I believe
6 it was the July 6th monthly production. It wasn't in there.

7 So anyway, we have American Spirit point of sale. We
8 have Fluid Pay -- which rings up credit card transaction
9 information -- Lightspeed. And then we have the migration from
10 Lightspeed to NetSuite POS, point of sale. So we've got
11 NetSuite. And my understanding is this takes a good bit of
12 work. I heard this both on the phone calls, and then I confess
13 I do the same thing; I go on Google and just read up just so
14 I'm making sure I've got a place to organize what I'm hearing
15 on the phone calls. So it takes time and it's a lot of data.
16 So I understood this is going to take time to do the
17 conversion, do the migration. That's fine.

18 Now, here's where I'm going with this relative to
19 this report. I made the election -- we had the July monthly
20 data to be produced provided by link on the evening of the 5th.
21 I felt like my hands were full in terms of just getting these
22 reports done and just trying to have them accurate. So I --
23 and I don't have the technical knowledge to really make an
24 accounting of all the check boxes of this. And it's -- Your
25 Honor, you can understand. These monthly productions are

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1 very -- in my mind, they're massive. I mean, there's a lot in
2 Lightspeed. There is a lot. And then you're getting all these
3 paper records, too, invoices.

4 But here's how I believe, at least from my
5 perspective, that production is insufficient. And here I am
6 relying upon a report from counsel for RLI. And it does -- we
7 do have Lightspeed. The principal folders are Lightspeed
8 production -- this is from -- Mr. Harris sent this Sunday
9 night, and I appreciate that he did. And I realize -- I wasn't
10 expecting that on the 6th. It comes in the night of the 5th.
11 There's a lot of work to do. Nexus invoices, Nexus July bank
12 statements -- by the way, which had 15 bank statements, three
13 credit card statements -- and then the Nexus payroll. What I
14 didn't see in this report -- and I never asked for it, Judge,
15 don't misunderstand me. The order says what the order says.
16 But here we now knew about these other databases. And what I
17 don't see in this report -- in fact, I'm seeing StampLi in and
18 of itself, Melio in and of itself, Fluid Pay in and of itself
19 were not placed into this file share. Now, that's not to say
20 the information wasn't in there, because my understanding on
21 the bilateral reviews is that information that's in those
22 databases may not have been copied, but you don't have -- you
23 see the actual screens. I don't know if that can be downloaded
24 or not. In other words, there's a question in my mind: Can it
25 be in a shared drive? So I believe that when it comes to

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1 Lightspeed and NetSuite, that the monthly productions have been
2 complete. I don't know, but I believe -- in other words -- and
3 I don't know -- but I have a question of -- and Mr. Harris
4 noted -- well, at least I understood your email to note that
5 those databases per se were not part of the shared drive. And
6 in my mind -- and again, I didn't ask for them on these
7 bilateral reviews or prior. You know, the order says
8 "database." I do have an understanding, though, that the
9 information, invoices -- I'm not sure about check registers, I
10 don't know, but things that you would find in there.

11 So I -- I have the concern, Your Honor, that those
12 databases that identify -- both the ones that are in current
13 use -- and to my understanding, that is Fluid Pay and Stampli.
14 And I believe that includes -- it also includes -- just a
15 minute, Your Honor -- Airbase. Stampli, Airbase, and Fluid
16 Pay, I believe they're the ones that they're continuing with.
17 And part of that is the ability to synchronize to NetSuite.
18 And that's why the others were abandoned, the other one or two.
19 I just -- to me, it was an issue of these databases. And I'm
20 not talking about native format. But in the extent that there
21 is -- you get the database in full copied and put into a shared
22 drive and sent out monthly.

23 Now, in addition to that, Judge --

24 THE COURT: Well, the order provides: And any other
25 documents requested by RLI bearing on Nexus's financial

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1 position.

2 This order was not intended to be limited to
3 QuickBooks, Lightspeed, NetSuite. It says, "and other
4 financial databases." I mean, they just can't change their
5 software or change the way that they're accounting for these
6 things and not provide it to RLI. I mean, they -- this was --
7 this order was a snapshot in time, and it was intended to
8 provide RLI with any other documents requested by it bearing on
9 Nexus's financial position.

10 SPECIAL MASTER: And so Your Honor, by the way, I --

11 THE COURT: And by means of a Google shared drive or
12 other secure and compatible electronic means was just the means
13 by which it was to be shared with RLI. So in other words, they
14 weren't putting them on Pony Express -- putting documents on
15 Pony Express and shipping them off to Chicago. This order says
16 RLI gets whatever documents bearing on the financial position
17 of Nexus that RLI asks for. That's what this order provides.

18 SPECIAL MASTER: And Your Honor --

19 THE COURT: So if they --

20 SPECIAL MASTER: I don't know whether or not all
21 documents produced -- it would be difficult -- I don't know how
22 I could say that, because there's just so much. But my focus
23 is on the word "databases." And here we have Airbase, Stampli,
24 and -- I'm sorry, I can't -- Airbase, Stampli, and Fluid Pay.
25 And my understanding from counsel for RLI is those -- what I

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1 saw -- and by the way, I think everybody appreciated -- and not
2 just counsel, but Mr. Peroutka is a good example. He was
3 helpful on those bilateral calls. I think he was helpful to
4 Mr. Anderson and me; and, for that matter, helpful to
5 Mr. Minnis and Mr. Harris particularly in those last two days,
6 because we really got pretty deep in them. Ms. Katsantonis I
7 believe was on vacation, so she wasn't on the phone calls.

8 And -- but -- so it was -- and of course, I do not
9 believe that the order compelled a bilateral review. I do not
10 believe that. But Nexus did, in advance of July 15 -- and by
11 the way, timing doesn't matter to me. RLI asked several times,
12 and I want to say it was the second phone call they asked, even
13 though I said I didn't think -- I was candid with Mr. Anderson.
14 I don't believe it's required, but I join in the request
15 because I think it would be helpful. It's helpful for the
16 Court to know, do a verification. And I believe that
17 verification did -- it did verify that it went -- can come to
18 Lightspeed. And actually Lightspeed -- and I believe we also
19 looked at KPI, I believe -- that production had been made. In
20 advance of the bilateral reviews, we learned about these other
21 databases. We didn't look at them. Now -- and here's -- this
22 is the other side of the report. And in addition to -- so I
23 don't -- to my understanding, they -- the bases in and of
24 themselves weren't placed in the shared drive. That does not
25 mean that documents or records of those documents were in the

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1 shared drive. I don't know or not -- that are on those
2 databases. I don't know. And by the way, Mr. Harris -- it's
3 late at night. It's not like he gave me -- this is a page
4 and-a-half email. And it was adequate for purposes of what I
5 need to say today. And Mr. Anderson, by the way, was not
6 available. And we did talk briefly a couple of times on
7 Sunday, but I just -- he was not available.

8 THE COURT: This order is very clear to me. It's
9 just very clear. There is no ambiguity. If -- at the time I
10 drafted the order, Nexus was using QuickBooks and Lightspeed
11 and NetSuite. But if they were going to change to something
12 else, those documents had to be made available. If they were
13 going to change to Stampli or Melio or Fluid Pay or Airbase,
14 those documents had to be made available, period. End of
15 story. This is not rocket science. And they should have been
16 produced on a monthly basis, as required under Section C.2 of
17 the order.

18 SPECIAL MASTER: Your Honor, I -- that's -- my
19 thinking concurs with that of the Court.

20 THE COURT: Because when I wrote --

21 SPECIAL MASTER: Again --

22 THE COURT: I wrote this order, okay? And when I
23 wrote this order, I went back through the transcript of the
24 hearing that took place in -- I don't know -- August or
25 September of last year, and tried to pick up every single

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1 database or financial tool that Nexus was using at that time,
2 but it wasn't just limited to those. If they wanted to move
3 their financial information under another shell, that shell had
4 to be provided. If they wanted to move it to a third shell,
5 whether it's called Airbase or Fluid Pay or Melio or Stamplicy,
6 that had to be provided. This isn't rocket science. This is
7 clear.

8 SPECIAL MASTER: By the way, nobody is making an
9 issue that they've made any changes because of this litigation
10 or this process. In other words, this is an evolution.

11 THE COURT: Sure.

12 SPECIAL MASTER: We get that.

13 THE COURT: And it was even true throughout this
14 litigation. I've heard more times than I can count that we're
15 moving to a new software system, or we're moving to this, or
16 we're moving to that. This order was designed to pick it all
17 up for one purpose: So that on a monthly basis RLI, consistent
18 with its agreement with Nexus, would have a clear financial
19 picture of the financial stability of Nexus. That's all this
20 is. That's all this is. And so you may be able to -- I mean,
21 there might be an issue about not using this name or that name
22 or this name. This order is broad enough -- and any other
23 documents requested by RLI bearing on Nexus's financial
24 position -- it's broad enough to cover any of those things.
25 If -- I just want to be clear about that. This is not rocket

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1 science. This is just -- and you know, I cut down -- I
2 deliberately -- and I say that in my opinion -- I deliberately
3 reduced the amount of data that Nexus had been producing under
4 the preliminary injunction. I deliberately went to one -- they
5 used to have realtime access. I went to one-month production
6 on this financial data because I expected there to be 2.4
7 million of collateral security paid, and then the additional
8 security paid on an ongoing basis once the notices to deliver
9 were issued.

10 So RLI's review of financial data and the financial
11 data that I was ordering was directly tied -- and I said that
12 in my opinion -- and I reduced the amount of financial data
13 necessary because I said, Well, they're going to have 2.4
14 million in collateral, so their risk is not as great because
15 they've got collateral. But they didn't pay the collateral.
16 They didn't pay the collateral. So those two are just tied
17 together.

18 SPECIAL MASTER: By the way, Your Honor, my remarks
19 about the database -- these databases as to the August -- the
20 shared file on the evening of August 5, it's not in the report,
21 so it's oral. And I -- in contrast to my remarks about Section
22 A, the fact that Mr. Harris got an email to me Sunday night or
23 late Sunday afternoon, that was fine. I mean, I wanted
24 information.

25 And Mr. Anderson -- we talked a couple of times

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1 Sunday, and I believe we talked on Friday for wholly different
2 reasons -- just wasn't there. They were brief calls. But I
3 hope, Mr. Anderson, the fact that it's not what I just said, I
4 don't want you to think you've been blindsided. I'm just --
5 again, I'm trying to see and appreciate this through the
6 Court's eyes. It's that simple.

7 Now, it's kind of -- this is kind of a "Tale of Two
8 Cities" in a way because it does not cover the whole report.
9 In the -- here we have the bilateral review was beyond the
10 scope of the order. Nexus agreed to it. We start off on the
11 21st at the user level, which is -- there is one higher level.
12 It's admin level. And RLI expresses a concern, Hey, wait a
13 minute, how do we know we're not seeing something that admin
14 level can? And then the concern back, the problem is -- and
15 since the July 15 order, not only was everything made
16 available, but the decision was made: Hey, we'll let you view
17 our live control. So Mr. Minnis -- I think he was here --
18 Mr. Minnis at RLI has full control and access to each of these
19 databases. So Nexus even goes a step further. Say, Well,
20 admin level, there can be changes. But yet I asked again --
21 and Mr. Anderson then confirmed -- so starting on July 23, July
22 26, and July 30, we had admin level. So everything that Nexus
23 sees -- and I don't know if it's any different or not, and
24 nobody on the phone call said that. But here's where I want to
25 go. We're now seeing -- and I can have an appreciation for --

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1 in the course of the discussions -- for why RLI wanted
2 verification. And it was a function of, hey -- it was
3 articulated very well. In fact, Mr. Peroutka I thought said it
4 the best, but basically you see the words, the funds Nexus
5 receives each day from which sources and into which accounts --
6 in other words, they didn't see them in the monthly
7 productions -- and the funds Nexus disbursed each day to where
8 and from which accounts, and the revolving daily balances in
9 each and every bank account. Well, it's not in these
10 databases, although the expectation, if I understood
11 correctly -- Mr. Anderson can comment on that -- that's
12 something that's part of the sophistication that NetSuite has.
13 And I may have misheard that as well. So it's not a matter
14 that they didn't include something on this monthly; it just
15 wasn't in there. And with Mr. Minnis navigating and with
16 senior counsel from RLI, as well as Mr. Peroutka -- and
17 Mr. Kass as well, but Mr. Peroutka was there the last two days.
18 And he was very good about questions and answers. And then we
19 had Mr. Moore on, on the 30th, and we had two sessions, and we
20 took it as far as we could. And then the decision was the
21 following Monday -- this past Monday -- I asked, hey, we need
22 to set aside Tuesday or the 4th, Wednesday -- I can't
23 remember -- for the bilateral review at admin level. And the
24 decision was, hey, if we're not going to make anything -- more
25 information, there is no need. And that came from Mr. Harris.

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1 And that's fine. Okay. We got it.

2 But here's -- we actually said this in an email:

3 Online bank portals. Now, this is something that came up in
4 roughly mid or slightly later July. And now we see the
5 importance of that. What we learned -- and we learned this
6 through Mr. Anderson -- and Mr. Peroutka went in through these
7 and couldn't answer these three questions. In fact, nothing
8 was being kept from the databases, because it's not in there.
9 And we learned that as part of its daily practice of setting
10 priorities for payables, Nexus will access the banking online
11 portals, and, if I understood correctly, the merchant account
12 portals. Credit cards go through them. And then he sets
13 priorities of what gets paid.

14 THE COURT: Well, one thing that's not a priority is
15 paying the monies required by the Court's order. That's not a
16 priority. They're getting all this -- they got \$14 million in
17 in revenue since October 23rd, and they're paying everybody
18 else but who the Court ordered them to pay. That's the problem
19 here.

20 SPECIAL MASTER: Well, I asked -- again, I made the
21 observation that -- and by the way, prior to July 15 -- and
22 this went back to June -- we don't see the transactional
23 histories. And I didn't appreciate what that meant until
24 Mr. Harris and Mr. Peroutka on the calls identified receipts
25 coming in each day, where they're going, disbursements each day

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1 to where, and daily cash balances. And then all of a sudden I
2 understand, ah, that's what transactional history means and
3 transactions. It's not in these databases, and so it's done
4 through these portals. Well, I -- I made the observation: I
5 do not believe that access to these portals is within the scope
6 of the order. And I could be wrong, Your Honor. That's your
7 call. But I did ask, and Nexus --

8 THE COURT: "Any other documents requested by RLI
9 bearing on Nexus's financial position" is intentionally
10 broad -- intentionally broad to cover whatever they need to see
11 to make sure that their position as the bonding company
12 is safe. It's intentionally broad.

13 SPECIAL MASTER: Well, I confess, Your Honor, I
14 wasn't sure if that would include -- it's not a book and
15 record, but it is access. And to me, splitting the difference
16 was -- and this is back when we under the transactional
17 histories -- well, look, if you have access to what we used to
18 get in the mail with a bank statement -- you know, the check
19 details -- print them off and produce them. And although I
20 wasn't -- I did not believe -- to my thinking, the order did
21 not encompass someone else's books and records. But I do want
22 the Court to understand Nexus, until NetSuite is fully
23 populated and ready to go -- and for all I know, will continue
24 even after that -- that's for these money coming in, where it
25 goes, and daily cash balances on a daily basis, Nexus is going

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1 to the outside. And it has nothing to do with the process.

2 Apparently has been doing it that way for all I know from the
3 beginning.

4 So I -- and you'll see that's what's covered in items
5 1 and 2 of the report, as well as 3 -- 3. And so it's this --
6 okay, so I think in closing as to the merchant account, what
7 can be accessed on a merchant account portal or an online bank
8 portal, I'll simply say whether within the scope of the order
9 or not, I do not believe that the -- that declining my request,
10 notwithstanding -- and my observation was I didn't think it was
11 in the order. So if I'm wrong, I'm wrong. I believe the
12 objections were in good faith in not doing it. So I will say
13 this: So if the correct interpretation is going forward,
14 that's what it is.

15 THE COURT: "Any other documents." Documents doesn't
16 just mean this piece of paper. Any other financial
17 information, that's what the Court intended in this order.

18 SPECIAL MASTER: Now, in addition, Your Honor, Item 4
19 speaks to we don't -- there are other things that one would
20 expect to find, but it's not in these databases. And one of
21 the things is there are instances -- well, I shouldn't say --
22 they're in there -- transfers. Among them, the example is
23 transfers to Richard Moore, who, as you know, is an officer of
24 the corporation. But you don't have the backup documentation;
25 in other words, you don't know the why and the trigger. And

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1 again, it's not in the books and records, or at least not in
2 those produced. And based on the bilateral review, it's not in
3 there. I mean, it's just -- so number 4.

4 Number 5 is something that's -- it's: What are the
5 active bank accounts? And Nexus has identified its active bank
6 accounts, but it doesn't cover -- it covers -- and identified
7 inactive closed accounts. And it covers most of what RLI knows
8 about bank accounts, but not all. And so in number 5, RLI has
9 raised -- has preserved, because I heard this I want to say
10 maybe not in the first two calls back in April, following the
11 May production. So it would have been the early May production
12 I started hearing about the bank -- insufficient bank account
13 statements and credit card statements.

14 Now, there's another class of that that falls into
15 that has not been explained; and that is for those bank
16 accounts that have been produced, for a few of them, there are
17 not the records from every month from October 2020 forward.
18 And my feeling was, hey, even though it's this late in the
19 game, they were within the order. And whether or not -- and
20 nobody said they're not useful. Nobody said they're not
21 material. I mean, my feeling was, hey, it's within the order.
22 And my understanding is, even to today, even for a few of those
23 bank accounts that have been reports -- I think it's two or
24 three, but counsel for RLI will cover that -- we don't have
25 statements for every month. And that could be, again, not

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1 finding them. That could be an innocent situation. And also,
2 getting into the shared file, because these are documents now,
3 we're not talking about databases that you just download.
4 You've got to scan and all this stuff. In other words, I get
5 that.

6 Number 6 goes back to Stamplic and Airbase. And then
7 Melio, of course, was the historic. I've already explained
8 where we are on that. The other thing is RLI did not find in
9 the databases an accounting of those -- those very Section A
10 payments that I've noted to you, Judge. A few of them, the ACH
11 payments -- it's not all, but it's a few of those -- an
12 accounting record of that did not appear. Now, that may not be
13 the case as of August 5. That's as of July 6. And as the
14 Court knows, there were payments prior to July 6. I already
15 went through that tortuous history.

16 I think that pretty much -- I don't think I have to
17 go into detail on items numbers 6, 7, and 8. That's page 7 of
18 my report. Number 9, I think it's just noteworthy on a factual
19 basis that at least as to what we saw on RLI, both NetSuite and
20 now Stamplic -- and it doesn't surprise me they're the same
21 because one is feeding the other is my understanding, but we've
22 got disbursements from only three bank accounts.

23 The overstating liabilities, that's -- Judge,
24 that's -- that's not -- there is nothing nefarious about that.
25 My sense is, you know, Nexus is just -- it's -- they're just

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1 behind when it comes to historic financial accounting. And
2 here they've got an accountant firm that's trying to get caught
3 up, and they're still doing -- and Judge, I'm not -- you know,
4 I'm just simply making an observation. And I realize they have
5 limited resources. You know, where are they going to put them?
6 But the bottom line is -- but I want to go back to the fact
7 that the monthly production did have 15 bank statements. It's
8 a 160-page PDF. So these are PDFs. So in other words, are
9 they going to be able to find them all? Are you going to be
10 able to find that January 30 for Comera [phonetic] at 6923?
11 You know, I mean -- but it's not in there. By the way, that's
12 just -- I just made that up, but whatever. Fifteen bank
13 statements and three credit card statements.

14 Oh, and by the way, my understanding is -- back to the
15 credit card statements, because I think this is worth noting --
16 the Airbase, you know, when it's fully robust and populated,
17 it's going to cover credit cards and all those sort of things.
18 It's just not -- it's not fully in line.

19 Returning to the report, item 10 speaks about the data in
20 Airbase. I don't know if -- I don't know, when it comes to
21 Stampli and Airbase -- whether or not all the data has been
22 produced. My understanding is data has been produced, and it's
23 a lot of data. So that's -- you know, I don't know that I want
24 to say more about that. I think the report, I kept it short.
25 It actually took a good bit of effort to get it this short.

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1 But I believe that -- I believe those ten items cover the Court
2 well. And again, Your Honor, I appreciate the Court has shed
3 light particularly on online bank portals and merchant account
4 portals going forward relative to Section C of the order, not
5 Section A -- Section B, which, of course, is the judgment, but
6 Section C.3.

7 And so I -- and again, the first half of my report spoke
8 to what was produced on August 5. I did not have the
9 opportunity to actually do it myself, but the report from
10 Mr. Harris was both encouraging, because it did not -- I'm not
11 hearing an issue about what has been produced relative to, for
12 the most part, documents and the principal databases, NetSuite
13 and Lightspeed. And they are the principal databases. But
14 again, it just -- I'm just thinking to myself, if Stamplicity can
15 be downloaded onto a shared drive -- and maybe it can't -- but
16 why wasn't it? If Airbase can be downloaded on a shared drive,
17 why wasn't it? And that's what pops into my head. And Your
18 Honor, I do believe it's in the order, but in my mind it just
19 -- I was -- I didn't think that said, hey, make sure this is in
20 your production. It just didn't cross my mind.

21 So I believe that's the extent of my report.

22 THE COURT: Mr. St. Ours, let me ask you a question.
23 And I appreciate the incredible diligence in drilling down
24 you've done with regard to the books and records provisions,
25 both with regard to the data on the program participants and

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1 with regard to the data on the financial status. With regard
2 to the data on the program participants, do you believe that
3 Nexus has substantially complied in good faith with the Court's
4 order?

5 SPECIAL MASTER: I believe so, but this next comment
6 is more a footnote. I -- I do not have an understanding
7 that -- and I don't know what it would be or what Nexus would
8 have, but further information relative to -- that's part of,
9 but not necessarily keeping track of this individual, and hey,
10 are they going to show up at the next hearing, or are they
11 breach? Where are they? And that is to the extent there is a
12 record on appeals. And I do not have an understanding that
13 that's been produced. And I may be wrong about that, but I do
14 not have an understanding. I will say RLI has raised the
15 question and I have not heard it answered.

16 THE COURT: When you look at the breadth of the
17 production -- and you used the word monthly productions are
18 "massive," that was your word -- when you look at the breadth
19 of the production produced by Nexus pursuant to Section C.3, do
20 you have a view as to whether Nexus is in substantial
21 compliance with the Court's order?

22 SPECIAL MASTER: I don't -- I think that Nexus, on
23 the May production, fell short in material ways. I don't think
24 it was necessarily because of -- but I believe in June -- and
25 then particularly July with the fine tuning in terms of what

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1 they have, they were in substantial compliance, except that,
2 Your Honor, I'm just -- again, I think about Stampli and
3 Airbase and Fluid Pay. And then I think about, you know,
4 Melio, and I just -- I think about it. I have reason to
5 believe that substantial data that may be on those databases
6 was produced on July 5 -- I mean, July 6. I do not know. But
7 Your Honor, the fact is, we did not have sufficient data that
8 we even knew the names of these databases on the July 6
9 production.

10 THE COURT: Right. It became much later that you
11 even learned the names of these databases.

12 SPECIAL MASTER: Yes.

13 THE COURT: All right. Let me ask you this other
14 question that I want to ask you, Mr. St. Ours. Let me put you
15 on the spot here. RLI is asking me to appoint a third party
16 under Rule 66 or a receiver under Rule 70 to facilitate the --
17 and to actually do what the Court order says that Nexus is
18 supposed to do. Put aside the books and records and the data,
19 okay? Payment of the money. Do you believe that the Court
20 should appoint a receiver or a third party to facilitate the
21 payments, given what has happened over the course of the last
22 month?

23 And if you don't want to answer that, if you just
24 want to duck it and say, That's your job, Judge, go right ahead
25 and do that. But I'm asking you the question anyway.

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1 SPECIAL MASTER: Your Honor, my answer may not be --
2 well, I think my answer is from the perspective of the Court.
3 There is a conflict between what was within my jurisdiction or
4 my appointment in Section A and C and Section B. There's a 3.3
5 judgment of garnishment. And because of that -- because of
6 that garnishment -- and, in fact, it's happened in a few
7 instances. It's my understanding it's happened recently. And
8 there's nothing wrong with that. RLI has an absolute right.
9 But here is the rub, particularly when I hear about bank
10 statements, and that is I -- if disclosing bank statements
11 means they're all going to be emptied and we don't make
12 payroll, that's a problem, you know, or whatever bank is being
13 opened.

14 And so I -- I -- I see the merit of a receiver being
15 appointed to get where the Court wants Nexus to be relative to
16 the order, but on the flip side, I see that if that's going to
17 be the case, is -- you know, is a receiver to be doing what's
18 in the best interest of Nexus or what satisfies this order come
19 hell or high water? And I -- but yet, I don't know -- I don't
20 know the extent that guardrails could be placed. And I am not
21 one to say that whatever RLI chooses to do under Section B,
22 that it cannot do. I don't know. You know, I just -- so I --

23 THE COURT: You know, you raise a good point. You
24 raise a good point.

25 SPECIAL MASTER: I see the point of a receiver, and

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1 yet I see the inherent conflict. And then, so now I get to the
2 conflict and I'm thinking, can the Court -- and I don't know --
3 put guardrails on the receiver? I mean, the receiver has to
4 understand what his duty is. And -- but then with RLI having
5 knowledge because the receiver is engaged by it for
6 garnishment, I just -- that's where I struggle.

7 THE COURT: The conflict between A and B?

8 SPECIAL MASTER: The conflict between A and B.

9 THE COURT: That's a very astute observation and I
10 appreciate that. I've given that some thought.

11 Okay. All right.

12 SPECIAL MASTER: You know, I wonder -- you know, I
13 know you have two very good magistrate judges. And my sense is
14 that maybe there has been some frustration on their part in
15 this matter. So I'm not asking to put something else on the
16 table, but whether or not the Court has the authority is part
17 of this -- I don't know. Is this something Judge Ballou could
18 work out? I don't know. But I see that conflict, and I see it
19 as a conflict that would be -- that the receiver would face.
20 So that's...

21 THE COURT: I appreciate that, Mr. St. Ours, and I
22 thank you for all of the work that you have done on behalf of
23 the Court to date.

24 Do counsel for either side wish to ask the Special
25 Master any questions.

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1 Ms. Katsantonis? I'm going to give you a chance to
2 argue and put on whatever evidence you want; but while
3 Mr. St. Ours is standing up, do you want to ask him any
4 questions?

5 MS. KATSANTONIS: Your Honor, I want to thank
6 Mr. St. Ours for his efforts as well. I don't really want to
7 be in the position of cross-examining Mr. St. Ours. There is
8 certain questions such as, you know, this litany of payments on
9 the 44,000 that Mr. St. Ours said there was an intent to pay.
10 You know, I would have to almost -- you know, Nexus never
11 contends they paid these payments. Nexus didn't give any
12 evidence of the payments. It's just based on an email. I
13 think I can explain it in my argument.

14 THE COURT: Okay. Then let's do that.

15 SPECIAL MASTER: Yeah. And Your Honor, I have these
16 emails. And I -- and by the way, it was talked about on our
17 phone calls, but I did not make an effort to get into it,
18 because I thought, hey, time is going to pass. And my
19 understanding was, hey, RLI is not taking this. Hey, no, we
20 don't control. You control. I wasn't going to get into that.
21 I just -- my feeling was I just wanted the judge to know that
22 there is 44,000 -- by the way, I don't think anybody is
23 disputing at this point that they have been made. It's just
24 that I did -- you know, part of why I wanted an accounting
25 included that, and it just wasn't there.

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1 I think that's a fair question, Ms. Katsantonis. I
2 appreciate that.

3 THE COURT: Okay. Well, she said she's going to
4 address it.

5 Mr. Anderson, do you want to ask any questions of
6 Mr. St. Ours?

7 MR. ANDERSON: No. I would just like to thank
8 Mr. St. Ours for his efforts in this case.

9 THE COURT: Yeah, I would too. All right.
10 Mr. St. Ours, thank you.

11 Counsel, let's talk for a minute.

12 SPECIAL MASTER: Your Honor, do you want me to stay?

13 THE COURT: What would you like to do?

14 SPECIAL MASTER: I'm at the pleasure of the Court. I
15 mean, I'm not planning to stay just for the heck of it.

16 THE COURT: No, no, I understand.

17 What do counsel think? Do you think the Special
18 Master should stay, or can he go back to his practice of law
19 this afternoon while we --

20 SPECIAL MASTER: And I'm okay to stay if the parties
21 wish me to.

22 THE COURT: Ms. Katsantonis, what's the view of RLI?

23 MS. KATSANTONIS: Your Honor, I don't think there is
24 any reason that Mr. St. Ours can't return to his practice.

25 THE COURT: Mr. Anderson?

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1 MR. ANDERSON: I think, Your Honor, I would reserve
2 the right to have Mr. St. Ours remain here.

3 THE COURT: Okay. We'll do that. He's going to get
4 paid, though. He's getting paid while he's here.

5 MR. ANDERSON: I don't believe there is any question
6 of that in Nexus's mind.

7 THE COURT: All right. Thank you. Mr. St. Ours, if
8 you don't mind attending this hearing, I appreciate that. One
9 of the parties has requested, so I'm happy to accommodate.

10 All right. It's a quarter to 12. We've been going
11 on now for two hours and 15 minutes or so. What is the
12 parties' preference in terms of how you would like to proceed?
13 I think we do need a little bit of a facilities break. Would
14 you all like to take a break for lunch now, or would you like
15 to just go forward and then take -- and just finish and then
16 have lunch after, which is fine with me?

17 What -- what about the folks from RLI, what's your
18 druthers?

19 MS. KATSANTONIS: From our perspective, Your Honor,
20 I'd rather keep going. Obviously, take a facilities break, but
21 I'd like to go ahead and proceed.

22 THE COURT: Okay. Mr. Anderson?

23 MR. ANDERSON: I think a facilities break as well --

24 THE COURT: Let's do that. Let's take a recess until
25 noon, and then we will carry on. We will stand in recess.

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1 The folks who are on Zoom, we're just going to --
2 just like we did during that long evidentiary hearing we had
3 way back when, let's just stay present, put yourself on mute,
4 and we will return at 12. Thank you all.

5 (Whereupon, a recess was taken.)

6 THE COURT: Let's hear evidence the folks at RLI want
7 to present, and hear whatever evidence the folks from Nexus
8 want to present, and then we'll hear argument.

9 Ms. Katsantonis?

10 MS. KATSANTONIS: Thank you, Your Honor. With regard
11 to -- I thought it would be efficient for us to present to you
12 what we have learned, basically, and where we are with regard
13 to compliance with your order. And in that regard, as the
14 Court has noted, it's been almost nine and-a-half months --
15 almost ten months since your order, and Nexus remains in clear
16 and indefensible contempt. RLI filed its motion for order to
17 show cause back in December of 2020, almost eight months ago.
18 Since, the Court's convened two additional hearings, both in
19 March, which resulted in this appointment of the Special
20 Master, and the July 15th hearing. And the Court also -- we've
21 had at least eight status conferences with the Special Master.
22 We've had four limited bilateral reviews, which were just to
23 show the systems, not to give us any records of some databases.
24 It's clear that the Court has given Nexus all
25 opportunities to comply, and the Court's admonishment of the

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1 last 26 days, this was their last chance. Even with that
2 admonishment, they have continued in clear defiance of the
3 court order. And they have made no substantial progress since
4 the July 15th hearing, Your Honor. In total, they were
5 required to post the \$2.4 million in collateral on December 1st
6 and the additional security for bonds which the Department of
7 Homeland Security had issued a notice to deliver. As of
8 yesterday, that's 447,500. So the total collateral required to
9 post is \$2,850,000. From Nexus's records, we know that since
10 the issuance of the order as of the end of July, we believe
11 they have received in revenues approximately \$16 million, Your
12 Honor. And Nexus has paid, as of yesterday, a little over
13 \$100,000. So under the Special Master's report it was
14 \$100,000. We received one more payment as of yesterday --
15 \$107,000 roughly. So we're talking three and-a-half percent or
16 so of the order.

17 With regard to the books and records requirements,
18 Nexus has employed business-as-usual tactics, implementing the
19 shell game. They have had a continuous shift in undisclosed
20 databases, accounting systems, accountants, and counsel. They
21 have persisted in their refusal to disclose and produce records
22 from significant database systems and accounts actually used by
23 them on a daily basis. And I'm going to go through that a
24 little bit more specifically.

25 THE COURT: Hold on a second. Mr. St. Ours, if it's

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1 more comfortable for you, if you need to take notes or
2 something, you can sit up here where the probation officer
3 usually sits.

4 SPECIAL MASTER: Thank you, Your Honor.

5 MS. KATSANTONIS: Thank you, Your Honor.

6 So again, they have not produced their actual records
7 from significant databases and systems and accounts actually
8 used.

9 The Special Master mentioned the banking portals, the
10 merchant accounts. We'll also talk a little bit about Stamplicity,
11 which pays accounts payables. We're not getting all of the
12 information there as well. They have refused to provide
13 transaction details.

14 I mean, it's really simple, Your Honor. It's money
15 in and money out. This is not complicated. And we don't even
16 have to go back to the history -- 2018, '19, the changing. We
17 need to know today, you know, what is in your accounts? You
18 know, what is your financial status today? Where is the money
19 coming in from? They don't give us the source documents.
20 You're going to see they manually key in receivables into
21 Lightspeed -- manually, okay? And so we want to see the
22 source, the merchant accounts that collect the credit card
23 statements and transfer the monies to the banks. Where is that
24 documentation?

25 THE COURT: If the money is coming in and the

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1 question is the financial security of -- the financial
2 stability of Nexus, why do you care where it comes from?

3 MS. KATSANTONIS: Well, Your Honor, you're going to
4 see that they've told us there's different -- you know, we were
5 looking for the Lightspeed records to see what the revenue
6 coming in was, right? We saw the KPI record. And so we saw
7 the KPI record and we said, Wait a minute, we see your
8 Lightspeed and the KPI record. First of all, we kept saying
9 for months: We don't have any historical Lightspeed data.
10 They didn't give us Lightspeed data from October -- from your
11 order through February. And we said, Where is that data? No
12 response for quite some time. And then it was finally
13 disclosed -- and I have the date in here -- it was finally
14 disclosed let's say in June. Oh, by the way, we didn't use
15 Lightspeed in October through February. We used another
16 system, a virtual system. They didn't disclose the name of
17 that either. They didn't disclose the name of that until
18 after -- it was around July 6, I believe, and after we were
19 doing some reviews and even saw the name of it, American
20 Spirit. So that's what we're dealing with, Your Honor.

21 And then the same with the disbursements. You know,
22 we'll see in some of the bank account statements we presented
23 with the Court, you know, there's these disbursements. We
24 don't have any transactional detail. We don't have all the
25 records. As the Court will remember, right, we looked at

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1 Lightspeed and KPI. We have an April 19th letter from Richard
2 Moore that says, I'm going to -- to the Special Master -- I'm
3 going to produce all bank statements. May 5th, you get
4 everything. I'll go into -- and I can show you in detail which
5 bank statements they did produce. You know, they didn't
6 include statements for, you know, banks that we know they have.
7 But in any event, we got those bank statements, added it up,
8 and said, Wait a minute, this doesn't add up to all of the
9 revenues received in Lightspeed. And only then, after then,
10 did they disclose, Oh, by the way, we have this TrustCo Bank,
11 which the vast majority of the Lightspeed funds were going
12 into. Then after they do that in May, they then advise us, By
13 the way, we're going to stop using KPI, which is the indicator
14 which we could see the revenues and then match that.

15 So that's what we're dealing with, Your Honor, these
16 kind of shifting and transactional details. And then, of
17 course, the old story you've heard over and over again of empty
18 promises, we're nearing completion, we're migrating our data,
19 we're reconciling. That's what you're going to hear, I think,
20 from Ms. Wells: It's very complex, we're still reconciling,
21 we're still migrating. And they use that as a basis to
22 withhold records. And even as Mr. St. Ours testified or
23 advised the Court, you know, NetSuite, for example, only
24 includes three bank accounts. And they disavow the accuracy of
25 NetSuite. Richard Moore's letter of August 4th says they're

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1 not accurate. All the records, they're not accurate. That's
2 what's in his letter of August 4th to the Special Master. It's
3 the same game. It's just a lack of compliance with the order,
4 and they're in clear contempt, Your Honor, by any measure.
5 Without the appointment of a third-party administrator with a
6 financial accounting background to perform the specific
7 injunctive relief --

8 THE COURT: What's the difference between appointing
9 a third-party administrator under Rule 66 versus a receiver for
10 the purposes of getting the collateral paid under Rule 70?
11 What is the practical difference between those two?

12 MS. KATSANTONIS: Well, I guess -- I think it depends
13 on the -- as Mr. St. Ours referred to -- the guardrails you put
14 in place. Under Rule 70, it's the specific acts. Your order
15 is very clear, very specific with regard to exactly what needs
16 to be done, and it seems appropriate.

17 With regard to Rule 66, receivership, again, it
18 depends on what you -- what are the constraints you put on that
19 receiver. So I would say, you know, from the case law, the
20 distinction, we saw the Courts using Rule 70 in the *Solis*
21 *versus Williams* case, for example, in order to grab funds and
22 replenish them to a 401(k) plan, I believe. So it certainly
23 seems something that can be used in this instance.

24 You know, and I guess the Rule 70 appointment would
25 be one step less. You know, they assert that they're concerned

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1 with the receiver and whether that would push them towards
2 insolvency. I think that Rule 70 would probably be more
3 appropriate in this instance. But again, either way, whoever
4 is appointed, the goal is to keep Nexus in business, right, and
5 keep things moving forward, ensuring that the assets are being
6 used for the purpose in which --

7 THE COURT: What would -- if I appointed someone
8 under 66, what would that person do? What would you ask that
9 person to do?

10 MS. KATSANTONIS: Well, I think the person would --
11 the main goal would be to -- and I'm going to show Your Honor.
12 You're going to see from a review we did of StampLi, which they
13 would not allow us -- and the Special Master can confirm --
14 they would not allow us to do a screenshot. They would not
15 allow us to download any reports, but you could sort by payee.
16 So I did -- we did a sort. And I'm going to show the Court, or
17 I'm going to explain to the Court how I saw potentially \$1.7
18 million in the last six months going to unnecessary and
19 unrelated business expenses. So that's just an example. I'll
20 show you the specifics.

21 Okay. So what I would ask the person to do is go in
22 there, get -- look at the banking portals first, right, get an
23 understanding, what is the actual cash in? Has that been
24 reconciled? What accounts have been paid out? Get an
25 understanding of that. And then ensuring the funds coming in

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1 are being used for appropriate business purposes, payroll or
2 bond-breach payments, and that the assets aren't being
3 squandered and diverted for business -- for expenses completely
4 unrelated.

5 You're going to see, Your Honor, from our review they
6 spent --

7 THE COURT: Is that within the scope of an
8 appointment under Rule 70? I mean, is that -- and it's not
9 like I'm telling somebody to go and sign a deed, right? You
10 want somebody to go and do an ongoing -- an ongoing financial
11 review and pay you-all monies under -- under the -- under the
12 provisions of the order that deal with the collateral. I'm
13 trying to see how that's different, really, than -- in
14 practical terms -- from appointing a receiver with guardrails
15 that say, okay, you go in, you receive these funds and you pay
16 them pursuant to this court order to -- to RLI until its
17 collateral security provisions are -- those aspects of the
18 order are fully paid.

19 The other option I have that I've been thinking about
20 is just -- if the Court were to find they are in contempt -- is
21 just to impose a monetary sanction every day until they --
22 until they comply with the October 23 order.

23 MS. KATSANTONIS: I think that they would --
24 depending on the amount of the monetary sanction, they would --
25 they would be happy with that. They like to pay in interim

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1 payments over a long period of time. Delay, delay, delay.

2 That's what they've been doing. So I don't think that that
3 would get -- or coerce the relief that we're entitled to.

4 And I think under Rule 70, Your Honor, you know, it
5 is specific to do the acts incidental. With regard to the
6 *Solis versus Williams* case, right, there had to be a way that
7 the third party had to figure out and marshal assets to pay
8 back into the account. So those are kind of incidental things.
9 I think you could be very specific. They can reconcile the
10 accounts to determine the funds, identify and eliminate
11 unnecessary expenditures, and pay RLI from the funds that
12 remain. And that's what we're asking for.

13 THE COURT: You know, I'm really kind of surprised
14 we're here. Last fall when we were talking about this, RLI was
15 after \$10 million in collateral security. That's what you
16 wanted. You wanted \$10 million in collateral security. Well,
17 I didn't agree with that, and I imposed \$2.4 million in
18 collateral security based on the analysis that I did, and then
19 on an ongoing basis the additional collateral security for the
20 individuals for whom the Department of Homeland Security -- or
21 whichever agency it is -- issues a notice to deliver. I really
22 am shocked that this collateral security just hasn't been paid.
23 I just am absolutely flummoxed as to the -- why this money
24 hasn't been paid pursuant to the court order, and I'm
25 utterly -- I'm utterly mystified. If you had told me before I

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1 entered the order on October 23rd that I'd be dealing with this
2 in August of 2021, and they hadn't -- they hadn't complied with
3 the court order, I would have been shocked. And I continue to
4 be shocked that the Court's clear order has not been followed.
5 It just hasn't been followed.

6 MS. KATSANTONIS: And Your Honor, it's the same
7 thing. Your order said the 2.4 was the bare minimum necessary.
8 And as the Court pointed out earlier this morning --

9 THE COURT: It wasn't like it was going into your
10 coffers as damages. That is to be held as collateral security.

11 MS. KATSANTONIS: And the bond-breach rate continues
12 above 40 percent that we talked about. The reason we were
13 asking for the 10 million, we still have almost 20 million in
14 outstanding bonds, 19 million --

15 THE COURT: Oh, I know what your argument was, and
16 you wanted 10 million, and I didn't give you 10 million. I
17 entered 2.4, and they didn't pay that.

18 MS. KATSANTONIS: And the scenario hasn't changed.
19 Where the Court would be extremely dismayed is to see that
20 they're paying a production company --

21 THE COURT: I saw some of the exhibits.

22 MS. KATSANTONIS: -- 221 -- from looking at a Stamp
23 screenshot, okay, we saw 221,000 for the first six months of
24 2021. Then they've now given us 90,000 additional invoices for
25 July. So at least 311,000 to Think Global, which is a

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1 production company that they're doing reality TV shows, okay;
2 one, you know, related to the home life of Mr. Donovan and
3 Mr. Moore, and one related to -- and we have the video of it
4 here, Your Honor, as well, if the Court would like to see, but
5 we have those -- and then one called "The System" in which, you
6 know, we've seen some clips of that with, you know, protesters,
7 etc. So they're doing these TV productions.

8 We also saw payments to Richard Moore. It looks like
9 he then expenses it and pays Think Global. And that looks like
10 almost 300,000 there. We saw payments to Richard Moore in
11 round numbers, if you look at the bank account statements, of
12 about 105,000 just in the month of May. There is transfers to
13 the closely-affiliated companies that we talked about, you
14 know, Fixify, which is an IT company, allegedly, but it's a
15 Nexus affiliate. The invoices which we produced to the Court
16 at 709-1 -- and I'm looking at page 2 of 10 as an example --
17 I'm sorry, that's Fangistics. That's another one. But Fixify
18 is 709-2. If you look at the invoice -- and even if you
19 compare it with Fangistics, 709-1, the invoices are almost
20 identical in form. And at the top of both of them they have
21 370 Neff Avenue as the address. And then the invoices are
22 going to hmunzner@entlest.com. And so we pulled the corporate
23 records, Your Honor. And those offices at Neff Avenue and
24 Entlest is a Richard Moore company. And that is -- and we have
25 that with Fixify. And let me just show you -- I have the -- at

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1 709-3, page 18 of 19, is the State Corporation Commission
2 information on Entlest Brands, which provides the same address,
3 the 370 Neff Avenue, and provides the principal information
4 that Richard Moore is the president, and lists the same
5 address. And so that goes for Fixify. There is significant
6 funds going out, 361,000 we saw when we sorted on Stampli
7 January through June.

8 Again, they wouldn't let us do any screenshots, and
9 they won't -- they won't let us -- they won't produce these
10 kind of records from their data. When Mr. St. Ours says, well,
11 they've given some documents from Stampli, they've given us
12 invoices that from our review they haven't given us all the
13 information that's in Stampli that talks about, you know, all
14 of the payor information, the payee information, when it's
15 scheduled to be paid, prioritized payables. There's a slew.
16 So this is monies we think going towards insider companies,
17 okay?

18 There is also Executive Investigative Consultants.
19 When we did that sort, it was another \$152,000. That's Erik
20 Schneider's company. The Court is very familiar with
21 Mr. Schneider. And then there is unnecessary -- those are --
22 those are payments that we believe certainly are -- the Think
23 Global and some of these transfers appear to be unnecessary
24 business expenses.

25 We also have payments, for example, to

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1 SKDKnickerbocker. It's a public affairs political consulting
2 firm. 248,000 when we did the sort. There was some funds to
3 WYE Communications, another -- I think it's like a social media
4 marketing company, 100,000. Executive Services Concept for
5 Moore Security, 182,000.

6 So this was just in one short session with
7 Mr. St. Ours where we were on StampLi and we tried to sort by
8 some of the vendors and looked at some of these payments. We
9 don't have the records. They won't let us screenshot. And
10 that -- to me, not only does it show they're not complying with
11 the books and records, but it goes to the point, Your Honor,
12 they have received almost \$16 million from your order. And
13 they are standing before the Court with 107 -- as of yesterday,
14 107,000 in payments and an additional 60-some I think they're
15 saying they paid yesterday, but with 16 million in revenue.
16 Meanwhile from those numbers I read to you, that's 1.7 million
17 that I saw from doing a review briefly. So they're in clear
18 contempt, and we need to appoint a third party.

19 The other thing is Your Honor gave them every last
20 opportunity, last clear chance. Let's have this last clear
21 chance; I'm going to give you every opportunity, 26 days. The
22 same thing happened on summary judgment.

23 And first I want to apologize to Mr. St. Ours with
24 regard to any delay in receiving information, but there is a
25 reason for it. And the reason is, many times Nexus is telling

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1 Mr. St. Ours they're making payments, they're giving him
2 emails, but those aren't payments. And we can show -- and
3 Mr. Grycz can testify -- as to what payments came in and didn't
4 come in, okay? So, you know, unfortunately, you know, there is
5 things that Nexus said -- and that goes to I think it was
6 47,000 in Mr. St. Ours's report. Those were never payments.
7 They're emails, and I can explain where those emails came from.

8 But it is true that since your order was issued in
9 October, that no collateral was paid until May, not on December
10 1st, not after we filed motions for contempt, not after your
11 hearing in March, not after you hired a Special Master in
12 April. And they gave us 4,500 in May. And remember in May
13 they're paying 150,000 to Richard Moore. They're paying
14 100,000 or so to Fixify. And they're making other large
15 payments, rather than paying their collateral obligations. And
16 since the July -- and then July 1st through 14th, there was
17 another 46,000 that Mr. St. Ours verified. And since July 15th
18 when we wrote in the brief that \$9,282 was paid, that was true
19 when we wrote the brief to our knowledge on that Sunday. It
20 was a payment dated July 22nd, 23rd, and 26. And they added up
21 to 9,282.60. On that Friday, there was another \$7,000 check
22 that came in that we didn't learn about until Monday. So that
23 was still, in the 16 days since your last clear chance, at most
24 we got \$16,736. That was their big effort. And then in
25 August, now right before the hearing, all of a sudden we got

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1 another 40,000. And so that's what leads up to the 107,732. I
2 do know that they yesterday said that they did make another
3 60-odd thousand payment.

4 And so that's the extent of any compliance. They did
5 not pay the 20 percent. What they did with the numbers that
6 Mr. St. Ours was a little bit confused by, by the emails, is
7 they tried to backdate at least one of the payments that they
8 had made before July 15th and say, oh, that was 20 percent for
9 July 1st. So even under the best scenario, from July 15th when
10 you gave them the last clear chance, they paid 20 percent for
11 eight days in July: July 4th, 5th, 6th, 7th, 8th, 10th, 11th
12 and 12th. And those payments totaled \$56,000. The revenue for
13 the month of July is \$1,347,740. And this is the reported
14 revenue in Lightspeed, which leads to something else -- which,
15 you know, I don't want to get into -- but they say there's
16 another virtual terminal. That shows over two million going in
17 and out every month. And so do the bank statements show over
18 two million going in and out of the accounts every day. We
19 need to see the records -- underlying records -- to see if
20 there is duplication, or why that's what's in the records. But
21 even by the most conservative approach, if in July they
22 received \$1,347,740, 20 percent would have been \$269,548.

23 So they've squandered any efforts that the Court
24 provided them. They have elected instead to pay substantial
25 sums on unrelated business expenses or payments to insiders and

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1 affiliated entities, or payments that just are not necessary
2 when there is a pending court order. So, I mean, to me, this
3 just screams for the necessity for the appointment of a third
4 party, whether until Rule 70 or under 68. They are just not
5 going to comply. It's the same thing as in the past, right?
6 Right before a hearing there would be some payment on
7 bond-breach invoices, and then they would go silent again. I
8 mean, the fact that they only paid 4,500 in May, then they paid
9 nothing in June, and then, you know, started making some more
10 payments as the hearing approached, the July 15th is indicative
11 of the same pattern, Your Honor. And, you know, clearly again
12 the appointment of a third party is warranted.

13 With regard to books and records, Your Honor, it's
14 even -- oh, yeah, the one thing -- there's one more point I
15 want to clarify. And the Special Master I believe had this in
16 his report, and I did not review this motion for sanctions that
17 Mr. Anderson -- breathing new life into this case -- filed this
18 morning against RLI and its counsel, but I will say that there
19 was a contention about \$50,000 in payments. And Mr. St. Ours
20 wrote in his report there is this 50,000 -- I'm not sure. We
21 didn't credit them for it, but this was the disputed payments.
22 These were payments that they paid, and by their own records --
23 which we can show the Court, unless they dispute it -- they
24 were for bond-breach invoices, 122, 126 days past Treasury
25 date. When they enter those payments, they have to put in the

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1 system for which bond they're for, and they identified
2 specifically which bond those payments were for. And we also
3 show it in our ECF -- the list -- 709-11. We give them the
4 credit for that \$50,000 as bond-breach payments, invoices.
5 It's not collateral and it shouldn't count as collateral.
6 Nexus just throws numbers in to try to show compliance when
7 nothing could be further from the truth, Your Honor. So yes,
8 it was ECF 709-11. And if you look at the last two entries,
9 those payments are noted in there based on the receipt of the
10 credit card payments. And we have the underlying records that
11 show that's what they keyed in. And Mr. Grycz can confirm that
12 as well, Your Honor.

13 So with regard to the books and records, Your Honor,
14 it's worse. The situation is worse. With regard to just --
15 I'll get into the financials in a minute. With regard to the
16 important information about our bond principals, what
17 Mr. St. Ours notes is correct in the sense that with regard to
18 just the Capsule data, they've provided us their notes from
19 Capsule after -- and I want to remind the Court just really
20 briefly in a pleading before this Court, ECF 618, their
21 opposition to our plaintiff's motion on December 29th -- and
22 I'm looking at page 6, Your Honor -- this was one of the
23 pleadings I was referencing when Mr. Shoreman and Mr. Williams
24 were leading the charge. They wrote, "Nexus has surpassed the
25 Court's requirements by providing RLI with constant and

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1 instantaneous access to a shared drive. As to daily access to
2 participants who have been issued an NTD, Nexus is currently
3 providing RLI to its Capsule-derived data."

4 That's what they said to the Court. We followed that
5 up and said, We don't have access to Capsule. We have a
6 December email saying you've never provided us. Tell me where,
7 when, and how. And guess what? Nexus never answered.

8 December, January, February, March. And I think the Special
9 Master can -- could verify that I don't believe we got -- we
10 first got access to Capsule on April -- or documents from
11 Capsule on April 28th, '21, not as misrepresented in the Court
12 pleading at ECF 618, despite numerous representations.

13 And as the Court knows, your order isn't just
14 Capsule. They created a new bond-breach spreadsheet which just
15 lists mostly the information we've provided them, the
16 bond-breach dates, etc. But the Court's order provides that
17 it's not just Capsule data, right, but it's -- you had a whole
18 list here. Any and all documents, records related to the RLI
19 bond program participants. Such information includes, but is
20 not limited to, Capsule data, records of bond payments. Very
21 important. That was based on Ms. Wellman's report that the
22 history of the bond payments is very important. Tracking
23 records, bond-breach binders, and spreadsheets. Again, the
24 Court was going back trying to encompass documents that had
25 been produced, and any other information sufficient to assess

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1 RLI's bond risk. So we've asked for that, and it's not being
2 provided, Your Honor. We asked for them.

3 We know that they can sort in the databases by tags.
4 They had some tags that they say they've produced, but they can
5 sort it. So for example, they can sort by tags called "risk
6 pool." They have tags called "collateral bonds," and then they
7 have tags called "payments." They can sort and provide us with
8 that information. They haven't. They have not provided, very
9 importantly, the summary detail of bond principal payments.
10 They say, We've given it to you, because they gave us a
11 Lightspeed spreadsheet that shows every payment made every day,
12 \$420, or in the Capsule files payments may be noted. But there
13 is a way -- we saw their ability to sort and provide a summary
14 detail for each bond principal. How much have they paid? How
15 much was it -- how much -- was it collateral? How much -- was
16 it a promise payment? They have that information. It hasn't
17 been provided. And then importantly the appeals records. The
18 evidence we've seen is that they are providing information to
19 the law firm for the appeals, they're paying for the appeals,
20 but they've given us no appeal records. So that's just on the
21 bond principal data.

22 With regard to the financials, I already talked
23 about, Your Honor, the representation by Mr. Moore in April
24 that they provided us all bank statements, and yet they did
25 not. They did not provide us with the TrustCo statements,

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1 which we talked about, until after we showed that there was
2 inconsistencies in their records.

3 With regard to bank account statements, you know,
4 we've identified at least 25 active banks. They haven't
5 provided us any statements for five of them. For June
6 statements, for example, they only gave us 17 statements for 17
7 of the 25 accounts. We've identified gaps in those statements
8 on accounts that they have no statements. One was an account
9 ending in 9898 which Nexus produced statements for December and
10 March and June, but none of the in-between time: October
11 through November, January, February, April, and May. And as we
12 noted, they withheld check and detailing transfer information.

13 Same thing on the credit cards; we've identified 18
14 credit cards. They've produced statements for only three of
15 the accounts. Two of them it has produced only a single
16 statement, whereas there are at least 13 credit cards that we
17 haven't received statements. So that's just with regard to the
18 credit card statements.

19 But more importantly, it's the hide-the-ball with the
20 databases. And as the Court knows, we have a list of
21 communications with the Special Master asking about some of the
22 Lightspeed data and other databases that they failed to
23 disclose. We asked for other financial databases. We have a
24 detailed letter to that effect. And to think, Your Honor,
25 you're sitting there every month and in how many sessions with

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1 Mr. St. Ours -- there's eight before the review -- talking
2 about databases, and there's no disclosure that they had
3 stopped using Lightspeed. Then there is no disclosure of Melio
4 and Stampli. And Stampli is the one that I -- that we saw
5 during our review a lot of these disbursements until after --
6 right at the July 15th hearing where we found out, through
7 separate efforts, an email from Richard Moore talking about
8 Stampli and Melio. They never disclosed it. We're sitting
9 there every week practically with the Special Master, right,
10 and there is no disclosure of these accounts. And after your
11 admonishment at the July 15th hearing, we discovered three new
12 databases. They disclosed Fluid Pay, Airbase, and American
13 Spirit.

14 That is clearly fraudulent conduct, Your Honor.
15 Their failure to disclose these databases, their failure to
16 disclose the records of their contemporaneous financials is
17 improper. And, you know, there's also -- we could go through
18 ad nauseam the back and forth, but we have letters from Richard
19 Moore refusing to give us -- no bilateral review of Lightspeed
20 and NetSuite, even though they say those are the systems they
21 use. Again, we find out there's other systems. It's been a
22 constant shell game. They advise us of a virtual terminal, but
23 they didn't disclose it until on July 6 they tell us there is a
24 virtual terminal. They don't disclose it till July 22nd. I
25 believe it's because I saw the name American Spirit in one of

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1 the bilateral reviews. They used to use VersaCheck, Verified
2 Valid Deluxe eChecks. They just say they're no longer in use.
3 We understand that they were in use the end of -- since your
4 order from October to December '20. Didn't produce any records
5 from there. They say, We don't use it anymore, so we have no
6 records -- which, Your Honor, if they're allegedly going
7 through reconciliation, I don't know how they don't have
8 transaction details for then the source documents of checks
9 they wrote during that time frame. And, you know, we've got no
10 records at all from Melio and Fluid Pay; and limited documents
11 from these new databases, American Spirit, Stamplicy, and
12 Airbase. You know, I can tell you I did one check just to see
13 if I have invoices, because they gave us a bunch of invoices.
14 One was WYE Communications. I didn't see any invoices in the
15 documents that have been produced. And then importantly, as
16 Mr. St. Ours brought out, they have failed to disclose the real
17 records from the systems they're using on a daily basis.
18 They -- they advise -- they use their online banking portals,
19 and yet have produced no records from them and have given us no
20 access to that to determine what funds they have. And then
21 they look at their merchant accounts, and those are things that
22 we don't have access to. And again, with these quick bilateral
23 reviews, it's important to note to the Court that they allowed
24 that for the Special Master to confirm compliance, that there
25 is these databases. They didn't allow it for us to have

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1 records, screenshots, or any of the information. And based on
2 what I saw with regard to the 1.7 million we talked about
3 earlier, that's why. We don't have the transaction details to
4 show how much they're spending, sort it by payee, and see where
5 the funds are going.

6 Importantly -- you know, again, as we said before,
7 bank statements and loan are insufficient. We need access to
8 the check copies, the wire transfer, and ACH backup
9 information, credit and debit memos, all of that information
10 that shows you the source. As Mr. St. Ours said, we saw a
11 bunch of payments to Richard Moore, but we can't say what they
12 were going, where they were going, and how they were going and
13 what the purpose was.

14 And as I advised earlier, Nexus admits the records
15 produced to date are inaccurate and should not be relied on.
16 That's the latest that we received I believe both from
17 Mr. Moore's August 4th email, and I believe from Ms. Wells's
18 affidavit.

19 And then the last point I just want to hit on briefly
20 is real estate records. Again, Your Honor knows through the
21 history of this case we would look at balance sheets, profit
22 and loss statements that listed dozens of properties. And they
23 all had values -- 245,000. Now those values have disappeared
24 to zero, and they've given us no records of real estate
25 transactions. We've asked for it. They just -- their response

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1 is we don't have real estate. When Mr. Harris was looking
2 briefly on Melio -- and I believe we provided some
3 screenshots -- you could see payments for properties, specific
4 properties that were identified -- I think one was Windsong
5 Circle -- you could see some payments for homeowner association
6 fees and taxes related to properties that do appear to be being
7 paid by Nexus. So again, we don't have the records.

8 There is no denial that they are in contempt, Your
9 Honor. And, you know, one point not to be lost, obviously -- I
10 am sure the Court is aware -- but since the order of October
11 2020 till now, how much has RLI incurred in attorneys' fees and
12 costs, and for the time of the Special Master to collect the
13 amounts that have been received to date? It's unconscionable.
14 And not only that, the liabilities on new notices to deliver
15 are accruing faster than the amount of monies we're getting
16 paid.

17 So it's just -- it's -- we're almost ten months
18 later, Your Honor. We seek enforcement of the judgment under
19 Rule 70(a) or alternatively 66. There is no doubt they failed
20 to perform the specific acts within the time specified by the
21 Court. The Court has the power to appoint a third party to
22 perform the action required by the order. RLI continues to be
23 prejudiced by it, not only by the continuing --

24 THE COURT: How are you harmed?

25 MS. KATSANTONIS: Not only by the continuing accrual

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1 of costs, but, Your Honor, we were to be placed in a secured
2 position. We're supposed to be secured. And every day that
3 passes is to our extreme detriment. There is other creditors
4 out there -- your Honor is presiding over some of those
5 proceedings -- and other APs approved. We're to be placed in
6 collateral. We still have a 19-plus million exposure. We're
7 getting prejudiced every day. And not to mention, again, the
8 clear -- it could not be more clear that they are taking assets
9 and using them for unrelated expenses. And Think Global is but
10 one example. So RLI is supposed to be placed in funds. We're
11 losing our right as a secured creditor, which is what the
12 injunction order is for.

13 THE COURT: What about the conflict that Mr. St. Ours
14 raises between appointing a receiver under Part A and then the
15 damages aspect under Part B of the order?

16 MS. KATSANTONIS: I don't believe there is any
17 conflict, Your Honor, in the sense that any -- whoever you
18 appoint -- with regard to the books and records, RLI under the
19 indemnity agreement already knows, or is entitled to know, what
20 the books and records are. So there is no prejudice there.

21 With regard to the enforcement actions, you know,
22 given the guardrails that the Court can impose, the person
23 appointed is purely going to take on the function of marshaling
24 assets, making sure that those funds are then provided for
25 collateral. Any other proceedings are separate that RLI may be

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1 doing with regard to its judgment.

2 THE COURT: Is RLI taking steps to enforce its
3 judgment under Part B for the three-and-change million dollars
4 in attorneys' fees?

5 MS. KATSANTONIS: We have outstanding motions with
6 regard to discovery. With regard to garnishment, my
7 understanding is the last garnishment action taken was in May.

8 Mr. Paul is here and he can certainly address that.
9 Is that right?

10 MR. PAUL: It was filed in May.

11 MS. KATSANTONIS: So just like any other creditor
12 that might be --

13 THE COURT: Do you know how much RLI has collected on
14 the judgment?

15 MS. KATSANTONIS: Only about --

16 MR. PAUL: It's just shy of \$300,000, Your Honor.

17 THE COURT: And you are?

18 MR. PAUL: Dustin Paul, Vandeventer Black. I'm
19 counsel of record for RLI as well.

20 MS. KATSANTONIS: Mr. Paul is handling the judgment
21 aspect, Your Honor. Our firm has not been involved
22 specifically in that aspect.

23 THE COURT: Okay. Thank you, Mr. Paul.

24 MS. KATSANTONIS: And Your Honor, lastly, with regard
25 to the point of the appointment, we would also ask that

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1 sanctions be issued and that RLI be permitted -- that the Court
2 issue a money judgment for the costs incurred by RLI to enforce
3 the Court's order over the last almost ten months. And we can
4 provide the Court with that in a separate pleading with the
5 accounting.

6 THE COURT: Okay. Did you want to put any evidence
7 on?

8 MS. KATSANTONIS: So Your Honor, what might be
9 beneficial, but I don't know, is we can take a five-minute
10 break. And if Mr. Anderson agrees with our accounting numbers,
11 we might be able to short circuit Mr. Grycz's testimony with
12 regard to what's been paid and not paid so that we're all on
13 the same page, or we can just put on Mr. Grycz and he can go
14 through what's been paid.

15 THE COURT: I want to hear from the witness.

16 MS. KATSANTONIS: Okay. We'll do that then, Your
17 Honor.

18 (Whereupon, the witness was sworn.)

19 THE COURT: Good afternoon. Nice to see you again.

20 THE WITNESS: Good afternoon, Judge.

21 THE COURT: You may take your mask off while you're
22 testifying.

23 THE WITNESS: Thank God.

24 DAVID GRYZC, PLAINTIFF'S WITNESS, SWORN:

25 DIRECT EXAMINATION

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1 BY MS. KATSANTONIS:

2 Q Good afternoon, Mr. Grycz.

3 A Good afternoon.

4 MS. KATSANTONIS: Can you -- oh, I'm sorry, has the
5 witness been sworn in? I missed it.

6 THE COURT: He's been sworn.

7 MS. KATSANTONIS: Thank you, Your Honor.

8 BY MS. KATSANTONIS:

9 Q Can you remind the Court of your current title with RLI
10 and your current roles and responsibilities?

11 A Sure. I'm assistant vice president of claims at RLI.
12 Basically, I oversee a team of claim examiners handling surety
13 bond claims. As part of that, we also pursue recovery against
14 indemnitors, both in terms of collateral or recovery on paid
15 losses.

16 Q Has your role or involvement with this Nexus matter
17 changed since you last testified in September of 2020?

18 A No. It's been the same. I'm basically charged with
19 participating in litigation, overseeing all the bond claims,
20 and attempting to get Nexus to comply with the indemnity
21 agreement and then the October order.

22 Q Is there someone at RLI that you rely on regarding the
23 status of collateral payments received and delinquent invoice
24 payments?

25 A Yes. So I work very closely with Laura Piispanen. She is

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1 a claim examiner IV working out of our Seattle office. Laura
2 handles all the immigration bond claims, and has since the
3 beginning. She tracks all the payments received by Nexus,
4 sends all the notices to deliver -- breach notices, etc. -- to
5 Nexus. And she is very carefully tracking collateral payments,
6 as well as the claim recovery payments from Nexus.

7 Q And when you say claim recovery payments, are you talking
8 about payments made on invoices?

9 A Correct. Yeah. So I guess where we find ourselves,
10 there's two different payments. We get payment in from Nexus
11 sometimes on a long-since-paid invoice, meaning RLI paid it,
12 and now a money order comes in, and now it's kind of a credit
13 card. We view that as -- I mean, we already went out of pocket
14 the money. So that's just claim recovery from a creditor,
15 what's typically called indemnification.

16 But under the order we started -- in May, we started to
17 get some collateral security payments. And, you know, that's a
18 different category, and we're tracking both of those.

19 Q Have you been able to confirm how much collateral security
20 RLI has actually received each month since October of 2020?

21 A Yes. With the -- with the only caveat -- and this is
22 where I think some of the confusion comes from -- if Nexus
23 makes a payment right before a court filing or right before a
24 court hearing, it takes our cash operations department maybe
25 one business day to get it posted from our bank, JP Morgan --

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1 JP Morgan Chase, and then it get reported to us.

2 So obviously, you know, I sense the friction on that
3 topic. That happened with our reply brief due on August 1st,
4 which was a Sunday, and it seems to have just happened again
5 with payments made yesterday. So I feel like we are good
6 through yesterday maybe lunchtime, but --

7 Q And as of December 1st, how much collateral security had
8 Nexus provided to RLI -- December 1st, 2020?

9 A None.

10 Q And how about in January 2021?

11 A None.

12 Q And in February, March, and April 2021?

13 A None for all three months.

14 Q And when did Nexus first make a collateral security
15 deposit since the October 23rd order issued?

16 A It was right before Memorial Day, like May 26 or May 27th,
17 we got in two money orders for -- I think they totaled \$4,500.

18 Q And --

19 A I'm sorry, two sets of money orders. They actually come
20 in very small thousand-dollar increments or \$500 increments,
21 but between the two sets it was 4,500.

22 Q And then how much collateral security did Nexus provide in
23 June of 2021?

24 A June, nothing.

25 Q And after the Court scheduled its July 15th status

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1 conference, did RLI notice any change with respect to
2 collateral security payments being made by Nexus?

3 A Yes. So once -- so this is kind of the history of the
4 case -- and I testified about this in September of last year --
5 once a hearing gets scheduled and all the parties are going to
6 report before the judge and have to face him, that's when
7 payments start trickling in a little bit more. So we started
8 to see an uptick. Once the July 15th hearing was put on the
9 books, we started to see a little bit of an uptick.

10 Q And I'm going to show you an exhibit --

11 MS. KATSANTONIS: Your Honor, would you like us to --
12 may I approach?

13 THE COURT: Yes, please.

14 BY MS. KATSANTONIS:

15 Q Mr. Grycz, can you look at this demonstrative exhibit and
16 explain what it is?

17 A Yes. So this is at my direction. I asked counsel,
18 working with myself and Laura Piispanen, let's summarize
19 everything that's been received in collateral to be able to
20 show to the parties and to the Court.

21 Q And does this summary accurately reflect all collateral
22 payments that RLI received since October 23rd as of yesterday
23 midday?

24 A Yes; with the qualification that payments that came in
25 yesterday and maybe the sending bank swept it in in the

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1 afternoon or evening, that's not covered here.

2 So actually, just to clarify that, I got an email five
3 minutes before this hearing started saying some payments came
4 in from Nexus yesterday. The hearing started. I haven't had a
5 chance to go through it. So that may be the fifty or 60,000
6 that was said to have been sent on August 9th. It hit our cash
7 ops department in the morning. This hearing started at 8:30
8 Central time. I haven't had time to go through.

9 Q You were saying that after the first initial \$4,500
10 deposit in May -- late May -- Nexus didn't make any further
11 payments until the status hearing was noticed.

12 How much collateral security did Nexus then pay after
13 learning of the status hearing, but before the July 15th
14 hearing?

15 A It's 46,325.

16 Q And then, as you are aware, you were at the status call
17 with the Court on the 15th of July. Nexus was provided a
18 last-chance, 26-day window. What has RLI received since the
19 hearing in terms of collateral security deposit?

20 A Well, so the hearing was on the 15th. I thought, from
21 what I heard on the hearing, payments were going to start that
22 day. That's what was represented. The first payment was \$18
23 on the 22nd, which was a week later. The first I'd say not --
24 you know, a little bit bigger payment was on the 23rd. It was
25 basically 16,736 during that -- you know, through the end of

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1 the month, and then an additional 40,171.20 up until yesterday
2 lunchtime. So we're looking at, since the hearing -- the July
3 15th hearing -- \$56,907.20.

4 Q And so I want to just clear up an issue that arose.
5 Looking at the July 15th to July 31st, RLI contended in its
6 brief of August 1st that it received 9,282.60. Can you
7 identify what those payments were?

8 A Sure. So that's a compilation of the July 22nd, the July
9 23rd, and the July 26th payments, which add up to that amount
10 that was in my declaration. I believe Nexus said it sent 7,453
11 on that Friday, which I guess would have been July 30th. As of
12 the time of my declaration and filing of the reply brief, which
13 was on August 1st, which was a Sunday, we had checked with our
14 treasury and cash ops department. Hadn't seen that. So I only
15 go with what comes into the company. I don't trust these
16 payment confirm emails that we're getting bombarded with. I
17 don't trust them. I only trust what comes into my company. So
18 sure enough, on the morning after we filed the reply brief at
19 11:59 p.m., we get confirmation that the 7,453 has arrived. So
20 of course, we will credit. We'll acknowledge that Nexus sent
21 that in. But that's why my declaration that evening said
22 something differently.

23 Q Has it been your experience when you receive these
24 payments that the date of payment indicated in a Nexus email is
25 not consistent with the date of RLI's receipt of payment?

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1 A Correct. A lot of times we see date of payment, July 2nd
2 or July 9th, but then I don't get the payment until a week
3 later. So I don't mean to be disparaging, but that is very
4 common with people paying us back. They backdate stuff to make
5 it look to say, ah-ha, I paid you on July 9th. Then we get the
6 payment two or three weeks later. That is incredibly common
7 when we get paid stuff. So I just basically disregard the date
8 of payment in an email, and I just stick to when did it come
9 into my company? It's just a safer way of kind of accounting
10 for this.

11 Q Okay. All right. So as of yesterday afternoon, what is
12 the total amount of collateral that RLI has received since the
13 October 23rd hearing?

14 A It's \$107,732.20; again, with the caveat that once I
15 could, you know, have half an hour to look into it, I may be
16 able to confirm another 60,000 or so that our cash ops
17 department reported to us this morning five minutes before the
18 hearing started.

19 Q And do you have an understanding of what the October 2020
20 order requires in terms of collateral?

21 A Yes. It requires two component parts that are different.
22 There is the lump sum collateral of \$2.4 million, which my
23 understanding is the minimum -- the minimum that would protect
24 RLI not tied to any one bond. It's for the whole immigration
25 bond program. And then separately there is under A.2 what we

D. Grycz - Direct

1 would generally call claim collateral. For every notice of
2 delivery we receive, within 48 hours Nexus is supposed to send
3 in the penal sum of the bond so we can hold it as collateral to
4 pay that claim if it materializes into needing a payment.

5 And what's very important for me to say is that it's an
6 "and." It's not an "or." So it's an "and." So they're
7 supposed to give the lump sum and separately do the notice to
8 deliver. I imagine the number would have been bigger had I
9 not -- the lump sum number would have probably been bigger had
10 we not been getting the individual claim collateral. So I saw
11 talks in the reports or one of the Richard Moore letters that
12 he sends to the Special Master that there is this insinuation
13 that a payment can cover both, which is absolutely not the
14 case.

15 Q And with your prior declarations you've attested to the
16 number and amount of new DHS notices to deliver that RLI has
17 forwarded to Nexus. Has that number and amount changed since
18 your last declaration?

19 A Yes, it has.

20 MS. KATSANTONIS: Okay. And then I'm going to show
21 you another demonstrative exhibit.

22 THE COURT: Do you want to introduce this?

23 MS. KATSANTONIS: Oh, I'm sorry, Your Honor. Yes, I
24 would like to introduce the demonstrative exhibit of Mr. Grycz
25 as Exhibit 1.

D. Grycz - Direct

1 THE COURT: Any objection?

2 MR. ANDERSON: No objection.

3 THE COURT: Received without objection.

4 (Plaintiff's Exhibit 1 marked and admitted.)

5 BY MS. KATSANTONIS:

6 Q Mr. Grycz, can you identify this table?

7 A Yeah, so once again at my direction I asked counsel to
8 work with myself and Laura -- Laura Piispanen -- to just
9 basically summarize every notice to deliver received since the
10 Court ended that October 23rd order by claim number, bond
11 number, the statement given to Nexus, and then the penal sum.
12 And that's basically a tally of that.

13 Q And does this table accurately reflect the current number
14 and penal sum amounts of outstanding bonds for which a notice
15 to deliver has been issued by DHS and provided to Nexus since
16 October 23rd as of yesterday, August 9th?

17 A It does.

18 Q And what is the total penal sum amount of such bonds?

19 A It's \$447,500.

20 Q Okay. And we can see from this table that the amount has
21 grown over time, correct?

22 A Yeah. There wasn't that much in the first -- you know,
23 the month of the order or the month or two that followed, but
24 then it started to pick up. We have several months with five
25 or six notices to deliver being received. So it's growing.

D. Grycz - Direct

1 You know, I think, for whatever reason -- maybe COVID -- the
2 federal government was a little slow last fall. But they're
3 back to -- DHS is back to business issuing these.

4 Q So with the 2.4 million that the Court ordered to be paid
5 December 1st, with the addition of this 400 -- almost 450,000
6 in additional security for the outstanding bonds, is the total
7 approximately 2.85 million in collateral that you understand
8 Nexus has an obligation to pay under the court order?

9 A Correct.

10 Q And how does the amount of collateral received from Nexus
11 as of yesterday, including over the last 26 days, compare to
12 the outstanding ordered obligations as you understand them?

13 A Well, I mean, it's a drop in the bucket. It's -- it's --
14 even if I just for the sake of, you know, my testimony assume
15 that 60,000 came in yesterday -- which I could confirm later
16 today -- that's about \$167,000 against over \$2.85 million.

17 It's -- I don't know the math. What is that, 4 or 5 percent?
18 It's just a drop in the bucket, and it's growing. So it's *de*
19 *minimus*. It's barely anything.

20 Q And as you stated, the amount of outstanding NTDs
21 continues to grow, right?

22 A Yes.

23 Q And has RLI incurred any additional cost in obtaining,
24 whether it's 107, 167 in collateral payments received to date?

25 A Yeah, we have to spend -- as I testified in September, I

D. Grycz - Direct

1 said we had to spend a small fortune -- over \$3 million -- to
2 get them to comply over all those years with the injunction
3 orders and to get a judgment against them and then deal with
4 all the frivolous stuff, the bad faith counterclaim that I had
5 to fight, the alterego stuff that we had to fight, and
6 everything else.

7 I now have to spend another small fortune -- I think it's
8 at least \$150,000 -- between what will be the Special Master's
9 bills and our attorneys' bills -- getting them to supply what
10 is, on their best day, maybe 167,000 in collateral. So it's a
11 one-to-one. I have to spend probably 150,000 to get 150,000 in
12 collateral. I mean, that's not -- that's not how this is
13 supposed to work.

14 Q And I just want to briefly touch on -- you've indicated in
15 your declaration that Nexus has continued its practice of just
16 paying delinquent invoices past the 120-day mark?

17 A Yeah, that's basically what was happening. You know,
18 what's happening now is a little bit of a mixture of I guess
19 the collateral and then some of these credit card payments that
20 we've gotten. But for the several months it was just, oh,
21 we'll -- you know, here's a check or money order. We'll pay
22 that invoice that RLI had long since already passed. I of
23 course don't view that as collateral at all. That's not
24 collateral. That's not complying with the judge's order.

25 Q And with regard to the \$50,000 that Nexus has raised that

D. Grycz - Direct

1 it's paid recently on credit cards, do you have an
2 understanding of what those payments were for?

3 A Yeah, they were for invoices that RLI had already paid.

4 And in fact, just to clarify this, because I guess there's -- I
5 haven't read it, but there's a sanctions motion -- Nexus

6 asked -- I forget the date -- Nexus asked RLI -- Vivian or the
7 Special Master -- can we pay collateral with a credit card?

8 And we thought about it and wrote back -- and Mr. Harris wrote

9 the letter and said, We -- RLI as a company -- we don't take

10 collateral payments by credit card. You know, we take a lot of

11 collateral, and we're not going to let someone put a million

12 bucks on a credit card. So we take payment in lots of other

13 ways, but we don't take payment by collateral; however, we have

14 a website where indemnitors who owe us money can pay us back

15 for a bond claim that we had to pay via credit card. They go

16 to this website. I can give you the URL, if you want it. They

17 can go to a website that ends in claim recovery. So if we had

18 to pay a \$10,000 contractor's license bond claim for a

19 contractor, we go to the guy and say, You've got to pay us

20 back. He says, Can I put it on my credit card? We say, Okay.

21 So we do make a little concession.

22 So we told Nexus we're not taking collateral by credit

23 card; however, if you want to pay us for an invoice that we

24 paid, okay, fine. Even though we had to eat the merchant fee,

25 we will -- we're willing to let you pay, but you have to enter

D. Grycz - Direct

1 a bond number and a claim number. And Nexus did exactly that.
2 They went onto our website, they entered a bond number, they
3 entered a claim number, and they confirmed they were trying to
4 make payment on an invoice. So I didn't think -- up until the
5 sanctions motion, I didn't think there was any dispute that
6 those -- I think it's 50,000 in credit card payments for stuff
7 that I paid in March or April and was paid by credit card in
8 July, I didn't think there was any dispute. That's clearly not
9 collateral. We're not counting that. It's not on the chart,
10 and it's not collateral.

11 Q And Mr. Grycz, when Nexus itself makes the payment,
12 doesn't Nexus earmark it for a specific invoice to say that
13 this is for payment of a bond-breach invoice?

14 A Correct. So if you go to -- it's
15 easypay.rlicorp.com/claim_recovery. I mean, it's right there
16 in the URL, claim recovery. The first page, if you go to it
17 right now, it says claim number, bond number. You will never
18 be able to move on from that screen unless you enter a claim
19 number and bond number. It's purely for reimbursement, as the
20 title suggests, claim recovery.

21 Q And so, when -- for those payments, RLI specifically paid
22 those towards a specific invoice, correct?

23 A Correct. We paid them in either March or April. They
24 already paid. So I just view it as Nexus --

25 Q No; I mean Nexus paid them. Nexus specifically identified

D. Grycz - Cross

1 they were paying for a specific invoice?

2 A Correct. Yeah, correct.

3 MS. KATSANTONIS: I have nothing further of
4 Mr. Grycz.

5 THE COURT: Okay. Mr. Anderson, do you have any
6 questions you'd like to ask Mr. Grycz?

7 MR. ANDERSON: Yes, Your Honor.

8 THE COURT: Please.

9 Oh, I'm sorry. Ms. Katsantonis, did you want to mark
10 this as Exhibit 2?

11 MS. KATSANTONIS: I apologize, Your Honor. Yes,
12 please. I'd like to move for the entrance of that exhibit as
13 Exhibit 2.

14 THE COURT: Mr. Anderson, any objection to that?

15 MR. ANDERSON: No, Your Honor.

16 THE COURT: Exhibit 2 will be received.

17 (Plaintiff's Exhibit 2 marked and admitted.)

18 CROSS-EXAMINATION

19 BY MR. ANDERSON:

20 Q Good afternoon.

21 A Good afternoon.

22 Q You referenced a letter that your counsel had sent to
23 Nexus regarding how and which they could pay RLI the collateral
24 payments?

25 A Yes.

D. Grycz - Cross

1 Q And I believe it was Mr. Harris that wrote that letter?

2 A Yep, that's what I recall.

3 Q And you basically delineated -- or your counsel delineated
4 two separate ways that Nexus can pay RLI for the payments. One
5 would be for A.2 payments. And it was a certain number of
6 ways, one being ACH, credit card, or -- and the other way --
7 and money order?

8 A No, we're not accepting -- I don't think we're accepting
9 A.2 collateral by credit card. I need to see the letter.

10 Q But I think you just testified that at least the five
11 credit card payments for \$10,000 each were being credited as
12 A.2 collateral payments?

13 A No, that's not what I said.

14 Q You did just say that they had a bond number, and the only
15 way to make those payments --

16 A We had already made the payment. That's not collateral.
17 To comply with the judge's order, within 48 hours of a notice
18 to deliver, you've got to pay the penal sum. Just having us
19 pay the invoice and then having to wait three months for
20 Richard Moore to get out his credit card and make a payment --

21 Q That is not my question.

22 A Well, you said that's what I testified to. I don't think
23 I said that.

24 Q What I'm trying to establish is you've now provided Nexus
25 the way in which to make these payments?

D. Grycz - Cross

1 A I disagree with now. I disagree with now. Making
2 collateral payments is not a difficult thing. You can make a
3 check. You can make a money order. If Nexus would have said
4 to us on December 2nd, we're ready to make the \$2.4 million
5 payment, give us your wire instructions, we do that every
6 single day. So it wasn't this --

7 Q Let me --

8 A This narrative that we only paid -- we only told you how
9 to pay us in June is false. It's a false narrative, and I
10 disagree with it.

11 Q My question was really simple. In the last two months,
12 we've been trying to find ways to pay you -- or Nexus has
13 been --

14 MS. KATSANTONIS: I'm going to object to the
15 characterization. That sounds like testimony.

16 THE COURT: Overruled. I'll let him ask his
17 question. Go ahead, Mr. Anderson.

18 BY MR. ANDERSON:

19 Q Nexus has tried to establish a way to pay 20 percent of
20 its daily and monthly revenues to RLI, and that was rejected.
21 So what we've come up with is the methods in which your counsel
22 directed us to make ACH payments. Does that --

23 A No, I disagree with everything you just said.

24 Q Through your counsel, have you been instructed that we
25 tried to make a direct payment of our 20 percent revenues

D. Grycz - Cross

1 within the last 60 days?

2 A I don't even know what -- what is tried to make a payment?

3 You put a check in the mail; or you say, I'm going to wire you

4 money. I've never seen any company -- I've seen plumbers, who

5 we have a license bond for, be able to get money in our hands.

6 Q I'll make it very simple. We're talking about Lightspeed.

7 We're talking about all these databases, our merchant account.

8 We offered -- Nexus offered to RLI -- whether it was through

9 your counsel or through directly to you -- the ability to make

10 these payments directly out of our merchant account. That

11 offer was rejected. Are you familiar with that offer?

12 A Not -- not quite in the sense that -- here's the deal: I

13 don't know what this merchant account is. I don't know what

14 the 20 percent --

15 Q Well --

16 A Can I -- do I get to answer your question? Let me answer

17 your question.

18 Q By all means.

19 A I don't know what the 20 percent of gross daily receipts

20 or gross daily revenue would mean. The term alters. All I

21 know is that there is a court order from him saying 2.4

22 million --

23 Q But that's not my question.

24 A So you're basically unilaterally changing his order.

25 You're saying, I'm not going to comply with that guy's order,

D. Grycz - Cross

1 the judge's order. What I'm going to do is the best we could
2 offer you is 20 percent of gross daily receipts. I don't know
3 what that means.

4 THE COURT: I think you need to answer his question.
5 Now, Mr. Anderson, would you like to restate your question,
6 please?

7 MR. ANDERSON: Yes, sir.

8 BY MR. ANDERSON:

9 Q Are you aware that Nexus has tried to pay directly to RLI
10 20 percent of its revenues out of its merchant account?

11 A I am aware --

12 MS. KATSANTONIS: Objection, Your Honor. Assumes
13 facts not in evidence.

14 THE COURT: This is cross-examination. I overrule
15 the objection, and I think the witness needs to answer the
16 clearly-phrased question.

17 THE WITNESS: Okay. An offer was made about
18 something about paying out of a merchant account. Yeah, some
19 offer like that was made.

20 BY MR. ANDERSON:

21 Q And are you aware that it was 20 percent of the daily
22 revenue?

23 A If you could show me the letter or email, I could confirm
24 it, but that sounds right. Yeah, the 20 percent of gross daily
25 revenue, of course I've heard of that. Yeah, of course I've

D. Grycz - Cross

1 heard of it, yeah.

2 Q Out of the merchant account directly?

3 A I don't know what the merchant account is, but I vaguely
4 recall hearing merchant account.

5 MS. KATSANTONIS: Same objection, Your Honor.

6 THE COURT: Overruled.

7 BY MR. ANDERSON:

8 Q Subsequent to that, Nexus was told to make A.1 collateral
9 payments by ACH; are you aware of that?

10 A I thought the letter said check, money order, ACH, or
11 wire.

12 Q I'm talking just about A.1 payments now. So it was told
13 only to make the A.1 payments by ACH?

14 MS. KATSANTONIS: Objection.

15 THE WITNESS: I don't remember hearing that.

16 How is this hard, to get money into our hands? I
17 mean, this is insane that every other company we do business
18 with knows how to put a check in the mail or just send in a
19 wire. That's been a problem in this litigation. I think it
20 stems from Mr. Moore and Mr. Donovan. They need to do
21 something, but they just first --

22 BY MR. ANDERSON:

23 Q I'm going to reclaim my time and ask the questions.

24 A Go ahead.

25 Q What you're saying is that by -- the payments always come

D. Grycz - Cross

1 late. And what I'm trying to ask is we've made -- we've made
2 offers in ways for us to make direct payments to you
3 immediately within 24 hours, but you don't --

4 A Why do you need my permission? Why do you need my
5 permission to send RLI money? You don't need my permission to
6 do that. You're under a court order. Maybe just comply with
7 the court order.

8 Q Sir, I'm asking the questions here. We're trying to make
9 payments to you. You testified that the payments don't come on
10 time.

11 A Clearly, no, they don't.

12 Q That's correct. Basically, the way in which -- are you
13 familiar with how ACH payments are made?

14 A I know of them generally. I'm not an expert. I'm not
15 going to pretend to be an expert on it.

16 Q When an ACH is -- or when you're notified of an ACH, does
17 it immediately fall into RLI's accounts?

18 A Truthfully, I don't know. I assume -- I assume -- I
19 assume no, that there is -- there seems to be a lag time. You
20 know, I think Nexus goes in and requests the ACH or makes it.
21 There's a little bit of a lag time before it goes from their
22 bank to JP Morgan, JP Morgan notifies us, our cash ops
23 department processes it. It seems to be one business day,
24 about, but I'm not an expert on those payments.

25 Q Do those -- are you aware if those payments are made on

D. Grycz - Cross

1 weekends?

2 A I don't know.

3 Q Would it be accurate that, based on Exhibit 1 at the
4 bottom, that these following payments from July 15th to July
5 31st should have posted to the RLI account before August 1?

6 A The July 15th to July 31st?

7 Q That's right, the total equaling \$16,736.

8 A Yeah, I think the date reflects the date we received it.
9 So yeah, I will admit we received those payments per those
10 dates.

11 Q And you verified these in terms of a reply brief in
12 working with your counsel?

13 A Okay. So as I said, so are you asking do these payments
14 come in during those dates, or are you asking the process for
15 how we --

16 Q When did you verify the 16,736?

17 A Okay. That would have been on Friday, and we said -- and
18 I said very clearly to our treasury department: I have to sign
19 a declaration under penalty of perjury over the weekend. So I
20 need to know what payments have come in from Nexus. So we even
21 said, has a \$7,453 payment been received from Nexus? The
22 answer from the cash ops and treasury department was no. So
23 that is why the declaration says it. Now, it came in the
24 following morning, and of course that's why it's now on the
25 list. It's now on the list. I completely understand Nexus

D. Grycz - Cross

1 sent that.

2 Q Are you also aware that Nexus has -- as it's been making
3 these payments -- has given RLI the authority or the discretion
4 to apply the daily payments it's been making by ACH to either
5 the A.1 collateral payment or to satisfy the A.1 collateral
6 payment, or the A.2?

7 MS. KATSANTONIS: I'm going to object to the
8 mischaracterization of daily payment.

9 THE COURT: Overruled. Cross-examination. Please
10 proceed. Reask your question.

11 BY MR. ANDERSON:

12 Q Are you aware that Nexus Services has provided RLI the
13 discretion to apply its ACH daily payments to either A.1
14 collateral requirements, or to make payments on A.1 or A.2?

15 A Yes, I'm aware that Nexus has said that they will defer to
16 us on how to allocate or credit it, yes.

17 THE COURT: You don't necessarily agree that they've
18 been making payments daily, though?

19 THE WITNESS: Oh, yeah, they haven't been making
20 payments daily. It's also very difficult -- it's a drop in the
21 bucket. So, you know, what to do with this -- what to do with
22 this money? Should we call it A.1 or A.2? Well, how should I
23 credit Nexus? I mean, it's on the list. We're giving them
24 credit for at least 107,000 -- you know, I may be able to
25 confirm in the next couple of hours it's 167. So you're

D. Grycz - Cross

1 getting credit. How we're actually going to allocate it
2 between A.1 or A.2, we haven't even made a decision on that
3 yet, but it's on the list. We'll give Nexus credit for it.

4 Q If you were to get daily payments from a merchant account,
5 wouldn't those go to satisfy the daily receipts if, say, a
6 notice to deliver was issued and provided to Nexus, therefore
7 fulfilling the 48-hour period?

8 A No, the daily receipts comment, I lost you.

9 MS. KATSANTONIS: Objection. Calls for speculation.

10 THE COURT: Overrule the objection. This is
11 cross-examination. I will allow -- this witness is fully
12 capable of answering any questions that are posed.

13 Mr. Anderson, please repeat your question.

14 BY MR. ANDERSON:

15 Q If RLI has the discretion to apply the A.1 or A.2 payments
16 based on that, won't that -- would RLI apply the A.2 payments
17 within the 24-hour period if it received an ACH payment
18 satisfying that amount?

19 A We might, but the problem is this list. The other
20 thing I --

21 Q That's not answering my question.

22 A Okay. Well, you kind of gave me a hypothetical of what I
23 would do. I might. I might also pick one of the first notices
24 to deliver on this list. You know, I may do that. I may say
25 I'm not -- you know, so if a notice to deliver comes in on a

D. Grycz - Cross

1 Wednesday for -- by the way, we have never gotten -- we have
2 never gotten collateral close to the actual amount of the penal
3 sum. I mean, that would be the smart thing to do. A \$10,000
4 notice to deliver comes in on Wednesday -- that was the order.
5 That was the order. And instead Nexus says, We're not going to
6 follow -- we're not going to follow the order. We're going to
7 do gross receipts 20 percent. That's problematic.

8 Now, I'm struggling trying to determine what was Nexus's
9 intent by this. So I might, if a \$10,000 notice to deliver
10 came in on a Wednesday and I get an \$8,000 ACH on a Thursday,
11 maybe we will credit that under A.2. Maybe I'll pick the first
12 one on the list -- you know, the first one on the list. I
13 don't know. You know, candidly, we haven't decided what we're
14 going to do yet.

15 Q Would RLI be willing to accept 20 percent payments from a
16 merchant account from daily receipts?

17 A Is that a settlement offer?

18 MS. KATSANTONIS: Objection, Your Honor. This isn't
19 cross-examination. This is -- this is Nexus trying to proffer
20 things so that they can try to spin some future attempts at
21 some *de minimus* requirements. It's not cross-examination.

22 MR. ANDERSON: Your Honor, with all due respect --

23 MS. KATSANTONIS: It's a settlement offer.

24 MR. ANDERSON: -- this goes to the heart of the
25 matter of today's receivership motion.

D. Grycz - Cross

1 THE COURT: Overrule the objection. I'll allow the
2 witness to answer.

3 THE WITNESS: Would I accept 20 percent daily gross
4 receipts in lieu of the judge's order? No. No. I'll just
5 say, Please follow the judge's order. It's a binding order.
6 Why do I have to accept a settlement offer of -- it's so
7 confusing. If you could just maybe give the notice to deliver
8 a penal sum -- you know, you can call it whatever you want
9 internally at Nexus. To comply with the order, we're going to
10 do 20. That's fine. But all we really care about is what
11 money is coming in, you know. So I'm not going to reject any
12 money and mail it back because it doesn't match a penal sum.
13 We haven't done that. We have credited the 107,000, possibly
14 soon to be 167, but I don't know if you're making me an offer
15 or...

16 BY MR. ANDERSON:

17 Q I think we can all agree -- and you just stated -- that
18 there is an outstanding order that Nexus needs to comply with.
19 Nexus is standing here today being accused of not complying
20 with it and now needs to go to a receiver. A big key piece of
21 that would be to marshal the monthly assets and the monthly
22 receipts from Nexus. And what you're stating here is that that
23 doesn't seem to matter, and they need to just satisfy the full
24 amount of the order. But what I'm asking is if Nexus has
25 provided a method that would not require the receiver to be

D. Grycz - Cross

1 appointed by the Court, would you accept that method so that
2 we --

3 A But the method only came about because I spent \$160,000 in
4 legal fees to force you -- I had to force Nexus, scare them
5 with receivership. That's not --

6 Q That does not answer the question.

7 A The question was so long-winded I got lost, but -- I'm
8 sorry. I apologize. Can you just reask it to me?

9 Q The purpose of the hearing today is to determine whether
10 the appointment of a receiver is proper, correct?

11 A Yes.

12 Q And your testimony today is that it is; isn't that
13 correct?

14 A Yes, to comply with the Court's order, because Nexus won't
15 do it on its own. That's the problem.

16 Q Were you present on the July 15th status hearing?

17 A I watched the whole thing.

18 Q And wasn't it proposed to the Court to make these type of
19 payments by directly directing the merchant account payments of
20 20 percent directly to RLI?

21 A Did the Judge order that?

22 Q No. My question was: Wasn't it offered to RLI at that
23 status hearing to directly make these payments?

24 A Oh, yeah, I remember a lot of talk about -- and I was
25 honestly perplexed then -- a lot of talk about we set up a

D. Grycz - Redirect

1 system where we're going to make 20 percent daily gross
2 receipts. I remember it being talked about, yes.

3 Q And since that didn't happen, Nexus began making ACH
4 payments to RLI?

5 A We received payments after the July 15th hearing. I'm not
6 sure I agree with the first part, but we did receive payments
7 after the July 15th hearing. I don't think that there's -- RLI
8 rejected the merchant account; therefore --

9 Q I'm just asking since the July 15th hearing, you've been
10 receiving ACH payments?

11 A Yeah, some partial ACH payments, yes.

12 Q And you have reason to believe that more payments were
13 made today?

14 A Yes. I was notified right before the hearing started from
15 Laura.

16 MR. ANDERSON: No further questions, Your Honor.

17 THE COURT: Thank you, Mr. Anderson.

18 Is there any redirect of this witness,
19 Ms. Katsantonis?

20 MS. KATSANTONIS: Just briefly, Your Honor.

21 REDIRECT EXAMINATION

22 BY MS. KATSANTONIS:

23 Q Mr. Grycz, looking at Exhibit 1, since the July 15th
24 hearing, did RLI make daily payments to -- excuse me, did Nexus
25 make daily payments to RLI of collateral? Let's just look

D. Grycz - Redirect

1 between July 15th and 31st to start.

2 A No. The representation that was made during the hearing
3 was they were starting on the 15th. And the first thing we get
4 is an \$18 ACH on Thursday the 22nd.

5 Q Right. And then you only received three more payments,
6 right, in the next -- so a total of four payments from July
7 15th to the 31st, correct?

8 A Yeah, correct. You know, so the 27th, 28th, 29th are
9 missing.

10 Q So Nexus was not making daily payments of its receipts to
11 RLI, correct?

12 A Oh, yeah, yeah, correct. Since the July 15th hearing, not
13 daily.

14 Q And isn't it true that to the best of your knowledge, they
15 only made payments for about seven or eight days of alleged 20
16 percent payments?

17 A That's correct.

18 MS. KATSANTONIS: Nothing further, Your Honor.

19 THE COURT: Okay. Call your next witness. Thank
20 you, Mr. Grycz.

21 THE WITNESS: Thank you.

22 MS. KATSANTONIS: Your Honor, I'd like to call
23 Mr. Peroutka.

24 THE COURT: All right.

25 (Whereupon, the witness was sworn.)

R. Peroutka - Direct

1 THE COURT: Good afternoon. Nice to see you again.

2 THE WITNESS: Good afternoon, Your Honor.

3 RAYMOND PEROUTKA, PLAINTIFF'S WITNESS, SWORN

4 DIRECT EXAMINATION

5 BY MS. KATSANTONIS:

6 Q Hi, Mr. Peroutka. Again, for the Court, can you just
7 advise the Court of your current position?

8 A I operate as a -- as a consultant to RLI. I previously in
9 this matter have been qualified as an expert to give testimony
10 on these matters.

11 Q You attended the last -- I think it was four bilateral
12 reviews of the new databases along with the Special Master; is
13 that correct?

14 A I did that via Zoom, yes.

15 Q And from the -- have you had an opportunity to review some
16 of the records produced by Nexus?

17 A Yes, I have.

18 Q Okay. And from the records produced to date by Nexus,
19 have you been provided sufficient information to perform any
20 sort of risk analysis for RLI?

21 A The records presented to me have been insufficient to do
22 that.

23 Q Have you been provided records that accurately reflect
24 monies in and monies out for Nexus?

25 A No. I've seen a lot of records that purport to show money

R. Peroutka - Direct

1 in, money out. Unfortunately, they are inconsistent and
2 incomplete, and so therefore not reliable for their purpose.

3 Q And in order to ascertain, for example, Nexus's current
4 financial condition, would you need to review all of the
5 historical records of Nexus?

6 A No. Frankly, I've read the affidavit that was offered by
7 RLI asserting that.

8 Q By Nexus, you mean?

9 A Excuse me, Nexus, yes. I'm sorry. Ms. Wells, I believe,
10 offered the affidavit asserting that it would be necessary to
11 reconcile historic records dating back to 2018 or 2019 in order
12 to understand the current financial condition of the company,
13 and I take strong exception to that. The company receives bank
14 statements on a monthly basis. And we've seen a lot of those
15 bank statements. Every corporation has the ability and the
16 obligation, really, to reconcile those account statements.

17 When I said the information that I had seen was inaccurate
18 and inconsistent, what I was referring to specifically, the
19 fact that the cash accounts -- and by ripple through, the rest
20 of the financial statements -- the cash accounts within the
21 general ledger system are just wrong. I mean, they're showing
22 in some accounts significant negative million dollar plus
23 balances; in other accounts, positive million dollar plus
24 balances. And yet if you look at the bank statements, you can
25 see that at no time subsequent to January of this year did the

R. Peroutka - Direct

1 aggregate bank statements for all the accounts ever show a
2 balance that was more than I think \$280,000. So the idea that
3 any individual account has more than a million dollar balance
4 at the end of the month is silly. The suggestion that you have
5 multiple accounts with negative million dollar plus balances is
6 equally silly. That just never happens. I've reviewed the
7 bank statements. That doesn't happen. If you simply reconcile
8 the bank statements to the accounting records when you receive
9 them on a monthly basis, you can -- you can properly reconcile
10 and get accurate cash balances for July. You could do it for
11 June. You can do it for April and May. You don't have to go
12 back to 2018 in order to determine what the accurate resources
13 available to the company in July of 2021 are. That's just --
14 that's inaccurate.

15 Q And is it true you haven't -- you were not provided
16 reviews of the banking portals of Nexus?

17 A That's correct.

18 Q And you were not provided a review of any of the merchant
19 accounts?

20 A That's correct.

21 Q And so, sitting here today, you have not been provided
22 accurate records in which to perform a risk analysis?

23 A That's correct.

24 Q And then lastly, you saw some bank account statements. Is
25 it true that the records provided don't show all the

R. Peroutka - Cross

1 transaction details so that you can verify either the payments
2 or determine the purpose of the payments in the bank account
3 statements?

4 A That's correct. Bank statements that I've reviewed in
5 many instances show disbursements that are being made out of
6 the accounts with a notation that the transfer is being made in
7 many cases to Mr. Moore; but in satisfaction of what, we don't
8 know.

9 In other bank statements we see reference to specific
10 check numbers and dollar amounts. We don't have copies of the
11 checks. And so the ability to understand what obligations of
12 the corporation are being satisfied by these transfers to
13 insiders or transfers that are identified by check number only
14 is just beyond the scope of the records that have been made
15 available.

16 Q And do you agree that the appointment of a third party
17 would benefit in effectuating the Court's order?

18 A Absolutely.

19 MS. KATSANTONIS: I have nothing further, Your Honor.

20 THE COURT: Any cross-examination of Mr. Peroutka?

21 MR. ANDERSON: Yes, Your Honor.

22 THE COURT: All right. Mr. Anderson?

23 THE WITNESS: Good afternoon, Mr. Anderson.

24 CROSS-EXAMINATION

25 BY MR. ANDERSON:

R. Peroutka - Cross

1 Q Good afternoon, Ray. It's nice to see you again -- or
2 hear you again. You're always on Zoom.

3 I don't have the benefit of some of your background. So
4 if I could just ask you a few questions.

5 A I'm here to assist the Court. Go ahead.

6 Q Do you have a direct contract with RLI for your testimony
7 here today?

8 A If I remember correctly -- it's been a couple of years
9 since I put together the engagement letter -- but I believe the
10 engagement letter specifies that I'm being engaged by Watt
11 Tieder on behalf of their client, RLI; and that the payment
12 obligations don't stop with Watt Tieder, they pass through to
13 RLI.

14 Q So you have a direct contract, your belief, with the law
15 firm representing RLI?

16 A I believe that's correct.

17 Q And have you had any experience with other receiverships
18 for other matters of surety companies?

19 A Yes; several in the past.

20 Q So you've had several other matters where you've been an
21 expert in recommending a receivership?

22 A I have been appointed by several courts as a receiver. I
23 have served on several occasions as a consultant to individuals
24 who have been appointed as a receiver, and I've acted as a
25 consultant. I have rehabilitated companies as a receiver. So

R. Peroutka - Cross

1 I've performed a number of those functions, if that's helpful
2 to your question.

3 Q I believe so. Thank you.

4 And do you provide any consulting services or expert
5 services to other bond or surety companies?

6 A Not at present.

7 Q In the last 12 months?

8 A I don't believe so in the last 12 months.

9 Q In the last 24 months?

10 Let me ask you this -- I see you hesitating -- why don't
11 you just tell us the other -- I'll just short circuit. What
12 are the names of the other bond companies you have provided
13 expert services to in the last five years?

14 A During the last five years, Lincoln National is a company
15 that I've provided consulting services to. And I say that for
16 the sake of completeness, because I think my engagement in that
17 matter ran to an owner of that company rather than directly to
18 the company. And I am currently serving as a receiver for a
19 state licensed facility that does not involve bonding. And I
20 have been -- I recently concluded a receivership with a company
21 that did construction work and they employed bonds. But I was
22 not directly working for the bonding company that was involved
23 there.

24 So that's perhaps more information than you were asking
25 for, but I'm trying to be complete.

R. Peroutka - Cross

1 Q Sure. I understand.

2 Have you ever provided any consulting services for any
3 other immigration bond companies?

4 A Immigration bonds, no.

5 Q Going back to some of the other matters we reviewed over
6 the last few weeks during our bilateral reviews -- scratch
7 that.

8 In reviewing any of the documentation that Nexus has
9 provided in the last 90 days, have you reviewed any bank
10 accounts?

11 A Yes.

12 Q Or bank account statements?

13 A Yes.

14 Q And those are all in paper copy?

15 A PDF.

16 Q PDF. Sorry, PDF copy.

17 But essentially the electronic form of the paper records?

18 A Yes.

19 Q And in those bank statements, have they had any of the
20 balances either in a monthly total or from daily balances?

21 A I don't understand your question.

22 Q Using a hypothetical TrustCo account statement from, say,
23 June as an example, when you reviewed that statement, would
24 that statement -- would that statement contain the monthly --
25 end-of-the-month balance?

R. Peroutka - Cross

1 A Yes.

2 Q And would it contain record -- state notations or the
3 numeric values for the daily balances throughout the statement?

4 A Yes, as well as individual transaction amounts.

5 Q But just it does contain the daily balances on the
6 statements?

7 A You're pressing the limits of my knowledge. I don't know
8 whether it has delineated subaccount balances on a daily basis.
9 If my memory is correct, some banks do that usually in a
10 subportion of the account where you'll see that kind of
11 information.

12 Q Of the bank statements you reviewed in this case in the
13 last 90 days, they do contain the monthly balances?

14 A Yes.

15 Q And when we were reviewing the online databases during our
16 bilateral review -- namely, the NetSuite database -- we had the
17 highest level of admin access that was given or that you can
18 have to review that database, correct?

19 A That's what I was told.

20 Q But I believe -- do you recall verifying that level of
21 access when we were doing our bilateral review in NetSuite?

22 A I don't.

23 Q Okay. In terms of a reconciliation taking place from the
24 bank account statements into NetSuite, do you recall that we
25 verified how that reconciliation was going during our bilateral

R. Peroutka - Cross

1 review?

2 A I'm sorry, I don't understand your question.

3 Q Well, you stated on direct that we couldn't verify during
4 our bilateral review in NetSuite the level of reconciliation?

5 A Again, I don't think those are my words, because I don't
6 understand what you're saying. I'm trying to work with you
7 here.

8 Q I'll restate it.

9 You stated that when we reviewed the NetSuite database
10 during our bilateral review, there was a level of
11 reconciliation that hadn't taken place in there?

12 A I've seen records that reflect a reconciliation of bank
13 accounts that come out of NetSuite. NetSuite contains the
14 provision -- a process by which reconciliations can take place.
15 And that reconciliation is somewhat generic. You and I receive
16 bank statements from our banks, and you look at the ending
17 balance of the account. You look at and record checks that
18 have been written that have not been included in the statement,
19 and deposits that have been made that have not been recorded in
20 the statement, so that you can then take the ending cash
21 balance on the statement and turn it into an accurate
22 representation of the real balance of the account, including
23 outstanding checks that have written that haven't cleared, or
24 deposits that have been made that have not yet cleared the
25 bank.

R. Peroutka - Cross

1 NetSuite, like all accounting systems that I'm familiar
2 with, provide a mechanism to do that. And I've seen the pages
3 where that reconciliation should be done within NetSuite. The
4 problem is that when you -- when I reviewed those, they were
5 incompletely filled out such that the -- you can just see that
6 the reconciled balance is still a large
7 multimillion-dollar-plus negative balance or positive balance.
8 So clearly the reconciliation is not being performed, even
9 though I physically reviewed a page that provides the tool that
10 could be used in order to perform that reconciliation.

11 I know that's long-winded, but I hope it helps.

12 Q I think so. Maybe we'll get there in a moment.

13 A Okay. I'm still with you.

14 Q I think when we first started our bilateral reviews you
15 said you were not an expert in NetSuite by any means?

16 A I have not used NetSuite. I don't hold myself out as
17 being an expert specifically in NetSuite, but I've used -- and
18 I believe I'm an expert in a number of those types of automated
19 accounting systems, and other courts have accepted my testimony
20 in the past in that regard.

21 Q I'm not disputing your ability to testify to those
22 systems, but I specifically want to ask about NetSuite.

23 A Go ahead.

24 Q Are you familiar with how customized NetSuite needs to be
25 in order to even begin to do the reconciliation process?

R. Peroutka - Cross

1 A You're asking a question that I want to answer accurately.
2 And if that question means the specific screens that need to be
3 filled out and how they're filled out in order to cause
4 NetSuite to perform a reconciliation, I would say to you that I
5 have not used NetSuite enough or reviewed it in our bilateral
6 review sufficiently to be able to walk you through the screens
7 that would be needed to, in an automated sense, perform the
8 reconciliation, which is different from my prior testimony,
9 which is I believe it is necessary to reconcile the accounts.
10 And by doing that, it's a simple process of identifying which
11 checks you've written during the month that are not on the bank
12 statement, and which deposits you've made that are not recorded
13 on the bank statement. And if then you take those adjusting
14 entries and enter them into -- NetSuite is a general ledger
15 system -- enter them into the general ledger system, you can
16 satisfy yourself that the account balance is either correct or
17 it's incorrect. And whether you do that and then create an
18 Excel spreadsheet adjustment to get you back to what your real
19 balance is, or whether you enter that adjusting entry into the
20 general ledger as an adjusting entry, either of those will
21 work.

22 So my answer to you is it's necessary to do a
23 reconciliation. It's necessary to have a correct balance. You
24 can do it on a current month basis without going back to 2018.
25 And if your question is that more detailed one of specifically

R. Peroutka - Cross

1 how do you make NetSuite do that for you on an automated basis,
2 I couldn't walk you through that specific set of procedures.

3 Q Assuming once Nexus's NetSuite platform is fully built out
4 and customized so that it can do this reconciliation, would a
5 read-only access bilateral review each month help RLI
6 understand Nexus's financial position better?

7 A Would it help to understand it better? Yes. Would it be
8 sufficient? I doubt it.

9 Q Why wouldn't it be sufficient to have that level of access
10 on a monthly basis?

11 A Well, first of all, you're suggesting it be done on a
12 monthly basis. And I believe that the financial condition of
13 Nexus is sufficiently volatile that doing it on a monthly basis
14 and giving you that snapshot would not be terribly helpful. I
15 think you'd need to have ongoing access to it.

16 Secondly, doing that bilateral review, as you've
17 suggested, is expensive. It's cumbersome. And if what you're
18 suggesting instead is allow access to it on a daily basis so
19 that you can see what is clearing --

20 Q The order does not allow online access currently. It only
21 allows for us to provide the records. And so what we're trying
22 to determine is what might be a sufficient level of access.

23 A That was not a question, but I'm going to answer it
24 anyway.

25 That's your interpretation of the order, and I think I

R. Peroutka - Cross

1 would disagree with it. But I'm not acting as counsel in this
2 regard, so I'll leave my comment at that.

3 Q When we were reviewing the other databases, I believe your
4 direct testimony was that you didn't have access to the
5 merchant accounts?

6 A That's correct.

7 Q But we did look at the American --

8 A Spirit?

9 Q Yeah, American Spirit account. Wasn't that taking place
10 for the merchant account of the months in question that the --

11 A We looked at the software as distinct from looking at the
12 individual transactions passing through the account in
13 sufficient detail.

14 Q Hold on. Maybe I'll restate.

15 A Okay.

16 Q The American Spirit platform is not one that Nexus
17 currently uses; isn't that correct?

18 A That's my understanding.

19 Q And so we have to do sort of a retrospective bilateral
20 review of that for those periods of time?

21 A I think you're correct.

22 Q So it is true that we did a bilateral review of that
23 particular merchant account for those -- for those months?

24 A I want to be accurate in answering your question. And the
25 problem I have is, as you're aware, we walked through those

R. Peroutka - Cross

1 without screenshots and --

2 Q But --

3 A -- you know --

4 Q I know you, and your testimony just now, and counsel has
5 made a point of asking for screenshots, but that was not what
6 we did in the bilateral review, nor was it required in any
7 point in the order.

8 What I'm asking is: When we were in those accounts, you
9 did have access to the merchant accounts and were able to
10 verify that the databases were accurate during the review?

11 MS. KATSANTONIS: I'm just going to object to the
12 question and ask you to restate it, because you said merchant
13 accounts like there is a bunch of merchant accounts. I'd say
14 that assumes facts not in evidence.

15 BY MR. ANDERSON:

16 Q I was going to take one at a time, but we can be general.
17 When we did our bilateral review a few weeks ago, we
18 looked at several databases?

19 A Yes.

20 Q Do you recall those?

21 A I think you'd have to prompt me.

22 Q Okay. Do you recall reviewing the American Spirit --

23 A Yes.

24 Q -- database?

25 The Fluid Pay database?

R. Peroutka - Cross

1 A Yes.

2 Q The -- and then the other -- those are the two primary
3 merchant account databases, correct?

4 A Yes.

5 Q And then do you remember reviewing the Lightspeed
6 database?

7 A I believe so, yes.

8 Q I'll prompt you. We did.

9 A Yes.

10 Q It was on several different days.

11 And then the other ones were Stamp!i, Melio, and now
12 I'm -- Airbase?

13 A Yes.

14 Q So looking at the American Spirit, the Fluid Pay, and
15 Lightspeed account, those have the daily credit card
16 transactions contained in them, correct?

17 A They did, to my knowledge, have the daily transactions
18 contained within them. My hesitancy in just answering sure to
19 your question -- your original question -- is I recall going
20 through each of those. The review -- and I think you'll agree
21 with me -- was focused on exploring those databases that were
22 provided to us online so that we could identify what
23 capabilities were contained within each of the menu offerings
24 on screen. And we took --

25 Q Actually --

R. Peroutka - Cross

1 A If I can complete my answer, please.

2 Q Sure. Go ahead.

3 A Thank you.

4 So that we could identify what capabilities were within
5 each of the menu offerings on the various screens and step
6 through them.

7 It was not for the purpose of diving into the system and
8 coming up with totals that then could be compared to other
9 records of the company, such as NetSuite, to satisfy ourselves
10 that everything was being recorded and compared favorably with
11 the recordation in other systems and with bank statements.

12 That's the quibble, if you will, that I have with your
13 question. Sure, we spent a lot of time looking at these things
14 and it was completely inadequate in order to satisfy the
15 question: Are they accurately recording the information? And
16 so for that, I look at higher-level comparisons of the -- of
17 the agreement of totals within the subsystems and NetSuite as a
18 general ledger system combining them.

19 Q But you don't have any reason, as you just stated, that
20 you couldn't go in there and determine whether it was
21 inaccurate information?

22 A Well, the pesky cash balances that were millions of
23 dollars out.

24 Q Well, let me be direct. That was -- if you recall, that
25 was in a Stampli account or database?

R. Peroutka - Cross

1 A No, no, no, I'm not referring to that. But yes, there was
2 a StampLi account that was entered as I think a \$136 million
3 charge. It was wildly inaccurate and jumped off the page for
4 all of us.

5 Q I'm talking about an invoice number instead of the actual
6 dollar amount.

7 A Exactly. No. What I was referring to was when you take
8 those subsystems that report cash up into NetSuite, and then
9 you go and look at the cash balances that result from -- I
10 mean, these subsystems, they're daily. They're individual
11 transactions. They're thousands of transactions that then roll
12 up into the general ledger. And you look at the cash balance
13 in the general ledger and it says that it's more than a million
14 dollar negative balance. And you say, That ain't right. That
15 can't be right. I know it isn't right. I've looked at the
16 bank statement. So I know --

17 Q Speaking of bank statements --

18 A We can't talk over each other.

19 I know it can't be accurate because the end result is
20 wildly inaccurate. That's my point.

21 Q So speaking of bank statements, did you review any of the
22 bank statements to verify any of the information in any of
23 these databases that we reviewed during the bilateral review?

24 A You asked me that before. Yes, I did.

25 Q So just to be clear, you did review to -- you reviewed the

R. Peroutka - Cross

1 bank statements, the paper bank statements or PDF bank
2 statements?

3 A Yes.

4 Q In relation to when we reviewed the information on the
5 databases during our bilateral review?

6 A No. The information we were looking at in the bilateral
7 review was primarily current information. And the bank
8 statements that I reviewed were for -- I think I looked at
9 January through June of this current year, 2021. So it's that
10 time period that I looked at that did not include July.

11 Q So you didn't look -- you were not provided the documents
12 for the July production?

13 A I don't think -- I certainly saw the July production. I
14 don't think I looked at the bank statement portion. I don't
15 recall looking at the bank statement portion of the July
16 production. The July production, if I recall, was 950 pages.
17 I don't think I made my way through to the bank statements. So
18 I confined my mismatched statements to January through June.

19 But I will point out that the July financial statements
20 that I did review show the same million-dollar-plus positive
21 and negative balances in those same accounts. I just didn't
22 have a chance to go and look and see whether the bank
23 statements compared favorably.

24 Q Are you referring to the NetSuite account when you say the
25 million dollar and -- or which database are you referring to?

R. Peroutka - Redirect

1 A The output doesn't -- the output that I reviewed in PDF
2 format has a heading which identifies it as the Nexus
3 consolidated financial statements. And there are a couple of
4 other subsidiaries that are cash statement specific, and there
5 are chart-of-accounts specific pages. They don't say NetSuite,
6 but it's my understanding that they come from NetSuite. And
7 when we did our online bilateral review, one of the pages that
8 we stopped on was NetSuite, the balance sheet for NetSuite.
9 And it also had those same negative and positive
10 million-dollar-plus balances in various cash accounts. So I
11 believe, for those reasons, that the records I'm looking at are
12 NetSuite records.

13 MR. ANDERSON: No further questions, Your Honor.

14 THE COURT: Thank you. Any further questions for
15 this witness?

16 MS. KATSANTONIS: Just two brief ones, Your Honor.

17 REDIRECT EXAMINATION

18 BY MS. KATSANTONIS:

19 Q One to just clarify the record. Mr. Peroutka, with regard
20 to work performed in the last five years, have you performed
21 services for Allied World, Crum & Forster, and/or Zurich?

22 A Yes.

23 Q And with regard to the American Service database, you
24 testified that it showed transaction receipts, like \$420, etc.,
25 right?

R. Peroutka - Redirect

1 A Yes.

2 Q But to your knowledge during your review, did that
3 database show receipt batching and then transfer of the funds
4 to a specific bank account?

5 A No, I don't recall that.

6 Q Isn't that what you would expect from a merchant account?

7 A Yes.

8 MS. KATSANTONIS: I have nothing further, Your Honor.

9 THE COURT: Ms. Johnson, did you want to say
10 something?

11 MS. JOHNSON: Yes, Your Honor. I would like to
12 respectfully ask the Court to have a brief recess before we
13 rest on this witness.

14 THE COURT: What other witnesses does RLI have here
15 today?

16 MS. KATSANTONIS: That's it, Your Honor.

17 THE COURT: Okay. How about from Nexus?

18 MR. ANDERSON: One to three, Your Honor.

19 THE COURT: One to three?

20 MR. ANDERSON: Two or three, Your Honor.

21 MS. KATSANTONIS: May we ask for identification of
22 the witnesses, Your Honor?

23 THE COURT: Well, Ms. Wells is going to testify,
24 right?

25 MR. ANDERSON: Yes.

R. Peroutka - Recross

1 THE COURT: And who else?

2 MR. ANDERSON: Evan Anjin.

3 THE COURT: He's still with us.

4 MR. ANDERSON: And perhaps Michael Donovan.

5 THE COURT: He has not been with us, but maybe he's
6 ailing.

7 MR. ANDERSON: I think that's the reason for the
8 recess, which is why --

9 MS. KATSANTONIS: Well, then, let's finish this
10 witness prior to a recess.

11 THE COURT: The Court gets to decide these things.
12 And we're going to take a recess until 2:30, at which time we
13 will see if there is any additional examination for
14 Mr. Peroutka.

15 Mr. Peroutka, you're still on the witness stand. And
16 while you're on the witness stand, we can't have you talking to
17 anyone about your testimony in this case, as you well know.

18 THE WITNESS: I understand, Your Honor.

19 THE COURT: Thank you. We'll take a recess until
20 2:30.

21 (Whereupon, a recess was taken.)

22 THE COURT: Are there any additional questions for
23 Mr. Peroutka?

24 MR. ANDERSON: Yes, Your Honor.

25 RECROSS-EXAMINATION

R. Peroutka - Recross

1 BY MR. ANDERSON:

2 Q Hello again, Mr. Peroutka. I believe you had stated you
3 had done some work for Crum & Forster?

4 A Yes.

5 Q Is that on the insurance side?

6 A Crum & Forster, if I recall correctly -- this is a couple
7 of years back -- was sued by a -- by a hedge fund under a
8 theory that they had withheld pursuing claims against a
9 contractor and thereby induced -- I think the allegation was
10 induced the hedge fund to make a loan when otherwise they would
11 not have, which then caused them to lose a lot of money. And
12 so the question became normal business practice for that
13 company. That's the best I can recall.

14 Q But you don't do any current work for them?

15 A No, I don't believe so, no.

16 Q And have you had any conversations in the last 24 months
17 with Ronald Frank, the CEO of Lexington National Insurance?

18 A No, I don't think I've -- I don't think I've ever had a
19 conversation with him. His counsel is an attorney in Maryland.
20 His name is Jeff Nusinov. And I've worked for Mr. Nusinov in
21 that engagement. I'm aware of Fred Frank, and, you know, the
22 court appearance bond business that they run, which is
23 underwritten by Lincoln National, but I don't recall ever
24 having a conversation with those individuals.

25 Q But you have had -- I guess if I can just unpack that a

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1 little bit, you've had conversations with the attorney that
2 works for Lexington National --

3 A I'm sorry, finish your question.

4 Q Or a law firm, perhaps, that works for Lexington National?

5 A Yeah, it was not in-house counsel. It was independent
6 counsel representing I think Fred Frank, not Lincoln National,
7 in the litigation. It was largely a dispute between I think
8 two brothers who were wanting control and then ceased to be in
9 control of the -- of the Fred Frank bonding enterprise.

10 MR. ANDERSON: Okay. That's all, Your Honor. Thank
11 you.

12 THE COURT: Okay. RLI has no other evidence,
13 correct?

14 MS. KATSANTONIS: Your Honor, yes, we reserve the
15 right to call rebuttal witnesses, as may be necessary.

16 THE COURT: That's fine.

17 Nexus, call your first witness.

18 MR. ANDERSON: May I give an opening statement, Your
19 Honor?

20 THE COURT: Oh, no, no, absolutely you can. She did.
21 And I apologize for that.

22 MR. ANDERSON: No, that's all right.

23 THE COURT: Thanks, Mr. Anderson. Thank you for
24 reminding me.

25 And Mr. Peroutka, you may stand down.

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1 THE WITNESS: I'm sorry, Your Honor. I thought you
2 were done with me.

3 THE COURT: It's good to see you again.

4 All right. Mr. Anderson, let's hear what you have to
5 say.

6 MR. ANDERSON: Thank you, Your Honor.

7 I think the question before the Court is really
8 simple here, and I believe we have painted an outline on July
9 15th. And you're going to hear today that we're fulfilling
10 that promise, and we have a plan forward that will avoid any
11 further discussion of a receivership.

12 We told you that we were -- on the 15th of July when
13 we last were together -- that we were going to make 20 percent
14 of these payments directly to RLI. Some of those payments have
15 been frustrated not necessarily because of RLI, but just
16 because of the way in which they wanted to be paid. ACH
17 payments can't be made daily. They don't occur on Saturdays or
18 Sundays and they don't occur on holidays, not to mention when
19 we did these bilateral reviews, we shut down our finance
20 department at Nexus to conduct those reviews. So there wasn't
21 any implication or any evidence or any question as to whether
22 we had unfettered access while we were in there. We had
23 granted the administrative level access, at RLI's request,
24 through the Special Master to conduct those reviews. And so
25 while we were doing those reviews, several days were taken out

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1 between the 15th and today's date. So while there is some
2 disparity with the way in which some of the ACH payments make,
3 I believe they will track along the days that were closed and
4 the weekend dates.

5 Additionally, the way in which -- the merchant
6 accounts that Nexus uses, the way in which those payments to
7 them occur is they go into the merchant account, and then it
8 takes a day or two -- and if it's a weekend, it could be up to
9 three days -- to get into their account. Then from that
10 account it takes several more days to begin the transfer on to
11 RLI. So I know there was a discussion earlier, and we have
12 heard testimony to the effect that it's taken several days, and
13 the payments have not been quite as rapid. Well, that's just
14 because of the nature of the ACH payments. And that is why we
15 wanted to directly set up payments through this merchant
16 account where it goes directly to RLI. And when we were
17 conducting these bilateral reviews with the Special Master and
18 RLI, we elaborated on how that process would work.

19 Additionally, when we were together on the 15th, we
20 had just, days before, given RLI the discretion to apply the
21 payments we were making through these ACH payments going
22 forward not to, you know, somehow satisfy the 1.4 -- or the
23 \$2.4 million judgment, but they were going to get daily
24 payments. What we didn't want was to establish sort of a
25 questionable -- whether it's going to go to A.2 or A.1

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1 satisfaction. That would be up to RLI. I know we've heard
2 testimony that some of these payments were made months late.
3 That's not what we're here to decide right now. What we're
4 deciding is how have we been able to make good on the payments
5 we had addressed to you on the 15th of July? And we're
6 prepared to offer testimony that we're making good on those
7 payments. We've actually -- based on our calculations, RLI
8 will be getting payments additionally this week, and those will
9 total over 20 percent.

10 Additionally, we've been making a lot of upgrades to
11 the Nexus accounting system; namely, the NetSuite account or
12 the NetSuite database. And we've heard a lot of testimony to
13 this, but what needs to be understood not by the -- just by the
14 Court, but also by the plaintiffs in this case, is that in
15 about 30 to 60 days this is going to be a fully operational
16 system. And what we were doing is previewing during these
17 bilateral reviews the ability to see where we were and where we
18 were going. And we even discussed this, how long it had taken.
19 So we had -- are prepared to offer read-only access to those
20 databases.

21 Additionally, when it comes to Capsule, we are
22 offering -- we're transitioning to NetSuite 100 percent for the
23 CRM -- or the customer user interface -- where we monitor the
24 bond participants and we're replacing Capsule. And we have
25 also offered to RLI to have -- as we are going to, to all our

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1 surety companies with bond participants -- they're going to
2 have realtime access -- 24-hours-a-day, read-only access to
3 that information. So really when it comes to C.1 and C.2,
4 they're going to have access to their own bond principals in
5 realtime. What's taken a little bit of legwork and IT
6 workaround is to essentially migrate all that data over there.
7 And that's taken some time.

8 Additionally, we've been -- you heard from the
9 Special Master this morning that nothing nefarious has been
10 going on at Nexus based on his evaluation. And when it comes
11 to producing the records, we've been producing thousands of
12 pages each month. It's never to RLI's satisfaction. And
13 that's why we took the extra step and did the bilateral
14 reviews, so that they could at least be assured that we're not
15 hiding anything. And I believe the Special Master relayed that
16 this morning. Additionally, once we've built out this
17 NetSuite, all these databases that we're talking about are
18 going to flow directly into the NetSuite account in which we're
19 prepared to conduct further reviews and provide an additional
20 level of access.

21 So we've fulfilled those three obligations, I
22 believe, since the 15th. Now, it's going to take some time for
23 all those payments to be entered -- to show up in RLI's
24 account; however, they have been made, they're in process, and
25 they're going to be getting more payments today. And we have

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1 Ms. Wells today that will testify to exactly how much those
2 monies will include.

3 But the one telling thing from RLI's statements this
4 morning were -- in justifying this receivership was that one of
5 the jobs of the receiver is to come up with a final
6 distribution of assets. That's really scary, because, Your
7 Honor, when I interpret that, and the executives at Nexus
8 interpret that, and the other business partners of Nexus hear
9 those words, they think that Nexus is going out of business;
10 that once this receiver is appointed, it's going to liquidate
11 all the assets of Nexus to fulfill these judgments. Ever since
12 the order was imposed, Nexus has said it cannot satisfy this
13 lump sum judgment in A.1, and that any further satisfaction of
14 these amounts have to be taken out of the daily, if not
15 monthly, receipts. And we've come up with a plan in which to
16 do that. Twenty percent of topline revenue from a company is
17 devastating to their ability to continue doing what they have
18 been.

19 THE COURT: Ms. Katsantonis says 20 percent is 1.4
20 million -- or that the revenues are 1.4 million, 20 percent of
21 which would be around 280,000. But you haven't paid in
22 anything like that.

23 MR. ANDERSON: I believe, based on Ms. Wells's
24 testimony, we're prepared to offer -- I have the number over
25 there -- upwards of 236,000 that will be coming into RLI

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1 presently. What seems to be lost in some of this is as the
2 credit card receipts come into the accounts, it then has to
3 be -- that's a merchant account. Then it's transferred to
4 Nexus's account. And then once they're in there, they can
5 validate that those then can be sent over.

6 THE COURT: You know, I understand all that, and this
7 20 percent that cropped up the middle of last month. But what
8 about the eight months before that when there was this judgment
9 and nothing happened? And the only reason we're here and Nexus
10 is doing anything, consistent with the way they've operated
11 throughout this entire litigation, is only when there is a
12 hearing date is there any response from Nexus given, only when
13 it's -- I mean, I've seen it since day one. The only time
14 anything happens is when the Court is about to enter an order.

15 So what about -- I mean, plainly they haven't paid
16 the judgments. Plainly. They've had plenty of money to do it,
17 if you believe what Ms. Katsantonis says, that they've had
18 revenues of \$16 million between October 23rd and now. Why
19 shouldn't the Court simply find Nexus in contempt and order a
20 receiver for the limited purpose of compliance with the Court's
21 order as regards the 2.4 million in collateral and the
22 additional collateral? It's not like this order was a request.
23 It was an order. And Nexus has done -- they come in here today
24 kicking and screaming about -- but they're dragged into court
25 here. Until RLI pushed this issue, nothing was going to

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1 happen. And that's been the history of this litigation
2 throughout. So, I mean, why shouldn't the Court simply find
3 contempt because the monies haven't been paid -- they're
4 plainly in contempt -- and secondly order a receiver -- a
5 limited receiver to collect the monies?

6 MR. ANDERSON: I think that the behavior of Nexus in
7 the last 60 days --

8 THE COURT: But what about the eight months before
9 that, Mr. Anderson?

10 MR. ANDERSON: And I'm -- while not being involved in
11 the case at that point, it's my understanding that bank
12 accounts were being garnished, payroll was being missed, and
13 they couldn't sacrifice to do those things when they were being
14 frustrated. A lot of the other problems were just manifesting
15 itself. But we're here prepared today -- and I know there's
16 been talk that it's always before a hearing date. Actually,
17 the last hearing date we had on July 15th, we were working out
18 how to make these payments well in advance -- even of you
19 noticing the status, we were in the process of working together
20 with the Special Master to come up with these solutions so that
21 we can further make better financial productions, as well as
22 begin to make these payments.

23 THE COURT: Well, I understand needing to -- wanting
24 to make payroll. I understand people have families and they
25 want to get paid. I get that. What about payments to reality

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1 TV shows? What about all these Richard Moore related payments
2 that are in the hundreds of thousands of dollars? I mean, it
3 just looks to me like Nexus has decided it's not paying the
4 judgment, and it wants to pay what it wants to pay. And so,
5 why shouldn't that be -- why isn't that just *prima facie*
6 contempt of court? They're just doing what they want to do.
7 They're ignoring the United States District Court for the
8 Western District of Virginia and doing what -- paying who they
9 want to. So why shouldn't I just say: This is easy, I hold
10 them in contempt; I appoint a receiver; what happens, happens?

11 MR. ANDERSON: I think if you appoint a receiver,
12 Your Honor, the other sureties that Nexus has for their
13 outstanding bonds are all going to find that that is a trigger
14 to insolvency. And as you know, RLI has not written a current
15 bond with Nexus since 2018 -- early 2018. So this is -- this
16 is a historical business relationship. It's not an
17 insignificant one.

18 THE COURT: I understand.

19 MR. ANDERSON: They hold the -- looking at a shares
20 perspective, a bond participant perspective, they hold the
21 fewest amount of outstanding bonds with Nexus. And so their
22 bigger concern is that then DHS is going to --

23 THE COURT: Why hasn't Nexus just gone to RLI and
24 said, Look, we can't pay the \$2.4 million right now, but we'll
25 pay you \$250,000 a month until we can get up to -- until we can

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1 get up to 2.4?

2 MR. ANDERSON: Your Honor, we have attempted several
3 times to do just that.

4 THE COURT: Then why haven't you just paid some of
5 it? It's easy just to pay some. That shows some good faith.

6 MR. ANDERSON: Your Honor, we're here to testify that
7 we paid over 20 percent since the 15th.

8 THE COURT: The 15th of July.

9 MR. ANDERSON: That's right.

10 THE COURT: October, November, December, January,
11 February, March, April, May, June: Big zero. Well, not a big
12 zero; there was \$4,000 paid.

13 MR. ANDERSON: Yeah, but pragmatically -- I note your
14 frustration, Your Honor, but pragmatically going forward,
15 that's the situation we're in.

16 THE COURT: It's not a matter of frustration. It's a
17 matter of adherence to the rule of law. And the adherence to
18 the rule of law, doesn't it, Mr. Anderson, call for the entry
19 of an order of contempt with some sanction?

20 MR. ANDERSON: The practical reality going forward,
21 if you were to find that and make that judgment and appoint a
22 receiver, is that -- what is a receiver going to come in and
23 say, that it should be 15 percent of revenues? It should be 18
24 percent? It should be 22 percent?

25 THE COURT: Well, the receiver would be charged with

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1 taking whatever assets are there and applying it to the
2 judgment.

3 MR. ANDERSON: And I'm saying to you, Your Honor,
4 that we're in the process of already doing that. We're ready
5 to make 20 percent payments. We have been doing so. And in
6 terms of books and records, in the next 60 days this will be a
7 fully -- or fully operational NetSuite database that they'll
8 have access to.

9 THE COURT: You know, a year ago when we had the
10 evidentiary hearing in this case they were moving to a new
11 system that was going to be fully operational in 30 to 60 days
12 too. I know your client has probably told you that, but I have
13 heard that before from this client, okay? I have. I mean,
14 it's always: Yes, our numbers aren't accurate; our numbers
15 don't reflect reality; we're working on fixing them; we're
16 hiring Fusion; we're doing this; we're doing that.

17 It seems to me the time has come for the Court to
18 recognize that nine months have passed since this order has
19 been entered, Nexus has paid no attention to it, and that the
20 rule of law requires that the Court make a finding of contempt
21 and come up with an appropriate sanction. And your response
22 is, We're trying, right? That's your response. We are now
23 trying, right?

24 MR. ANDERSON: But I think that also is reflected in
25 the Special Master's report, that we're substantially compliant

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1 on a number of the areas, and we're moving toward full
2 compliance in others.

3 THE COURT: Well, on the Capsule data and the data
4 with regard to the participants, the program participants,
5 yeah, fairly compliant except for in the area of bond appeals.
6 On the issue of the financial books and records, I take
7 Mr. St. Ours at his word, massive monthly production, okay?
8 It's imperfect production based on what RLI wants, okay?

9 But that's not my focus here today, okay? My focus
10 here today is this case has been -- from day one been about
11 collateral security. And the collateral security was ordered
12 in October, and it hasn't been paid. That's what this case is
13 about. You could put books and records and all that other
14 stuff over there, okay? I'm talking about -- I mean, one could
15 argue that you have substantially complied with the provisions
16 regarding the bond participant documents. One could argue that
17 you've sort of complied with the books and records, or at least
18 made some effort toward it. But it's the payment issue that
19 gives me the biggest problem and gives the Court the biggest
20 problem with Nexus simply looking at the court order and doing
21 nothing.

22 So I'll let you finish what you're going to have to
23 say and put on your evidence, but that's where I'm coming from.
24 It's the -- and I understand that appointing a receiver is an
25 extreme sanction, right? I've only done it once before, okay?

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1 I've only done it once before, and those people needed it. And
2 I understand it's an extreme sanction. You tell me why, and
3 you put on evidence why -- as to why I ought not to do that,
4 and I'll listen to what you have to say.

5 MR. ANDERSON: I would just point out one further
6 thing. And it was actually the question you posed to the
7 Special Master, Mr. St. Ours, which is there is this inherent
8 conflict between --

9 THE COURT: There would be no conflict if part of
10 the -- if part of the order appointing the receiver, the Court
11 were to stay RLI's ability to collect the \$3.3 million in
12 damages, stay collection efforts. I could do that in order to
13 put the collateral first. Then there would not be any
14 conflict. I listened to what he had to say.

15 MR. ANDERSON: Your Honor, I couldn't agree more with
16 your last statement.

17 THE COURT: I'm sure they wouldn't like it. But, you
18 know, look, you said something in your brief, okay? And I
19 think about this all the time in -- sometimes in civil cases,
20 but always in criminal cases, right? And that is when somebody
21 asks for something, is that really in their best interest,
22 right? When the government asks for this kind of penalty, is
23 that really in society's best interest?

24 Here with RLI asking for a receivership, is that
25 going to explode your company and they're going to be in worse

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1 shape? I don't know. But I hear what you have to say, that
2 they ought to be concerned about what they're asking for. I
3 hear that. And so I'll listen to what the -- the rest of what
4 you have to say. I will hear your evidence.

5 But I am concerned about the abject failure by Nexus
6 to deposit the collateral. I mean, we argued about this
7 collateral for, you know, a long time, right? I mean,
8 Mr. Anderson, RLI has been after \$10 million in collateral
9 security since about the time this suit was filed, maybe about
10 six months later they came after their \$10 million. Well, I
11 had always thought the \$10 million was just a pie in the sky.
12 It wasn't grounded in reality. So I tried to come up with a
13 figure that I thought was grounded in reality, and Nexus didn't
14 pay that. I'm shocked that we're here. I just wonder why the
15 commitment to the rule of law and the requirement the Court's
16 orders be followed doesn't require me -- I mean, really
17 handcuff me and require me to find contempt and order a third
18 party. I don't think Rule 70 gets you there. I don't think
19 Rule 70 is appropriate because it's -- it really is the same
20 thing. It would be the appointment of a receiver for a limited
21 purpose.

22 So that's where I am. So I'll listen to what you
23 have to say and I appreciate you being here.

24 MR. ANDERSON: Your Honor, I did have a list of
25 things to go through.

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1 THE COURT: Let's do it.

2 MR. ANDERSON: All right. In some of the
3 mischaracterizations I believe in terms of what's been produced
4 in some of the databases in Stampli and Melio, all the invoices
5 that were in those databases have been produced during the
6 reviews.

7 THE COURT: I'm not concerned about the documents.
8 I'm not concerned about the databases. I'm concerned about the
9 money. It's the failure -- I mean, I think they have -- I
10 think what you've done in the bilateral review, what you've
11 done to identify these additional databases has demonstrated to
12 me that with regard to the books and records provision, and
13 with regard to the provision for the bond principals, sure,
14 compliance hasn't been perfect. But I'm not going to order
15 contempt as regards those. You have tried, okay? It's the
16 money. That's the issue. That's the problem. It's the
17 failure to provide collateral security. And that's where I
18 am -- I'm hung up. So let's hear what you have to say.

19 MR. ANDERSON: Well, I think with that, Your Honor,
20 I'd like to call my first witness.

21 THE COURT: Sure.

22 MR. ANDERSON: Ms. Rebecca Wells.

23 THE COURT: All right.

24 MR. ANDERSON: And my esteemed colleague over the
25 Zoom call, Ms. Juliana Johnson, is going to conduct the direct.

R. Wells - Direct

1 THE COURT: Great. Come on up, Ms. Wells, and be
2 sworn.

3 REBECCA WELLS, DEFENSE WITNESS, SWORN

4 DIRECT EXAMINATION

5 BY MS. JOHNSON:

6 Q Ms. Wells, can you hear me?

7 A I can hear you.

8 Q Please state your name for the record.

9 THE WITNESS: May I take off my mask?

10 THE COURT: Yes. Are you vaccinated?

11 THE WITNESS: I am.

12 THE COURT: Great.

13 THE WITNESS: Rebecca Wells.

14 BY MS. JOHNSON:

15 Q And how are you connected with this litigation?

16 A I'm sorry, could you repeat that?

17 Q And how are you connected with this litigation that we're
18 here for today?

19 A I am the chief financial officer of Nexus Services.

20 Q And what special certifications do you hold, Ms. Wells?

21 A I'm a certified public accountant.

22 Q And what qualifications did you need to have in order to
23 hold that title?

24 A Well, in addition to studying accounting at Georgia State
25 University, I also had to study for over a year in order to

R. Wells - Direct

1 pass the CPA exam. I also had to work in a practice with
2 another certified public accountant so that I could gain the
3 professional experience that I needed to in order to have that
4 credential.

5 Q And you've been Nexus's chief financial officer for how
6 long?

7 A I believe I'm in month four.

8 Q Now, in coming onto Nexus as a chief financial officer,
9 are you aware of software changes?

10 A I am keenly aware of software changes.

11 THE COURT: Where were you before -- what did you do
12 before you were chief financial officer of Nexus Services?

13 THE WITNESS: Well, I have worked in the accounting
14 and finance world for 20 years now. I started out in banking
15 and finance. And then it was after working in that sector for
16 about seven years that I made the decision to become a CPA.

17 When I worked in that sector, it was sort of the
18 beginning of my establishing my knowledge around databases,
19 information, and how databases work conjunctively within large
20 organizations -- in regulated organizations, I might add.

21 And then after that, and after -- after getting my
22 degree and passing the exam, I focused on business
23 implementation for small businesses. And we focused primarily
24 on getting -- getting sufficient internal controls and systems
25 so that smaller businesses could run efficiently.

R. Wells - Direct

1 After -- I worked in that type of practice when I was
2 getting my professional experience that was required for a CPA,
3 and then I practiced on my own for eight years. And it was
4 during the time that I practiced for eight years where I was
5 able to work on the engagement with Nexus on a contract basis.
6 And so I was keenly aware of some of the issues that they were
7 encountering and some of the challenges that they were
8 encountering both with dealing with the volume of data, with
9 the software available, as well as the expertise that they had.
10 And that isn't meant to be any sort of dig on anybody there.
11 Quite the opposite. I recall from the very first day that I
12 had any interaction with upper management within that
13 organization, the tone was almost startling because they were
14 so quick to take any recommendations that I offered. They
15 were -- I mean, I don't want to sound crude, but they were
16 quite hungry for any recommendations, any guidance, any
17 structure that I was able to offer up as a recommendation. And
18 that has been the tone that I have experienced with them.

19 I worked on that engagement -- I'll back up a second.
20 I worked on that engagement for about a year before I moved on
21 to work on another large engagement. That was the tone that I
22 experienced during that time. That is the tone that I
23 experienced. And then when this opportunity came up to help
24 them in this role, I jumped at the opportunity, because I knew
25 it wasn't going to be a struggle. That was the tone that --

R. Wells - Direct

1 that was how they had presented themselves consistently over
2 two years.

3 THE COURT: How long have you been employed by Nexus
4 Services?

5 THE WITNESS: I'm in month four.

6 THE COURT: Okay. So you came on as chief financial
7 officer?

8 THE WITNESS: As an employee, yes.

9 THE COURT: As an employee?

10 THE WITNESS: Yes. I worked as a contractor to help
11 with some of their historic cleanup previously.

12 THE COURT: Okay. Go ahead, Ms. Johnson.

13 BY MS. JOHNSON:

14 Q Now, with regards to this integration of software, what
15 software is Nexus currently -- (inaudible) --

16 A I'm sorry, did you say what software are we currently
17 using?

18 Q (Inaudible) -- yes.

19 A I'm so sorry, that broke up. Could you repeat that,
20 please?

21 Q Yes, of course.

22 You stated earlier that Nexus is integrating its software.
23 Can you explain to the Court what integration -- what software
24 it is that we're integrating into?

25 A Yes, I'd be happy to. We are currently targeting NetSuite

R. Wells - Direct

1 as our ERP, which means that is going to be the foundation for
2 our financial reporting. It's going to be the foundation for
3 our internal controls. And then it's my understanding,
4 although I'm less closely managing the CRM element and the -- I
5 believe we're also doing the POS integration that is out of the
6 box from NetSuite.

7 In addition to the NetSuite family of products that we're
8 using and trying to update with our historic information, we're
9 also using -- we're using two AP processing softwares, because
10 they both have different capabilities that are going to give us
11 a lot of powerful controls over our finances. And of course we
12 are going to be using the payment processor, I believe it's
13 Fluid Pay. I believe --

14 Q Okay.

15 A Is that everything or am I missing something? Those are
16 the ones that I'm most -- I'm most interested in for my
17 purposes.

18 Q And did you have to receive any kind of specialized
19 training in order to facilitate the use of NetSuite?

20 A Considerable training. In addition to my years of
21 experience working with databases in large and small
22 organizations, those -- in those instances, it was always with
23 other software. But when I came on with Nexus, I studied
24 for -- it was -- I want to say it was 50 plus hours of training
25 from NetSuite.

R. Wells - Direct

1 Q And this integration was actually started quite some time
2 ago, approximately 2019 or 2020; is that correct?

3 A I believe they did kick it off in 2020. At that point in
4 time I had rolled off of the engagement, but I was -- I was
5 aware of it because of my relationship with my colleagues.

6 Q So is the integration complete yet?

7 A No. It's far from it.

8 Q When would the integration be complete?

9 A Well, it's difficult to respond to hypotheticals,
10 especially when that response is associated with something like
11 software implementation; however, especially with the last
12 several months that I have been focusing primarily on this,
13 since -- at the point that I started really getting into that
14 part of our implementation -- let's see. My guess had always
15 been that I would be able to get all of our historic
16 information -- assuming that a couple of variables that we've
17 had to delegate out externally, assuming that those variables
18 could be controlled for, my assumption had always been that we
19 would easily be able to get the historic financial information
20 into NetSuite beginning January 1, 2021 within two to three
21 months.

22 Q Why hasn't that happened?

23 A Well, a large part of that goes back to the amount of time
24 that it has taken to respond to all of the different actions,
25 motions, and communication regarding this particular matter.

R. Wells - Direct

1 Q Are you referring to bilateral reviews? What are you
2 referring to?

3 A Well, yeah, I'm referring to bilateral reviews. I'm
4 referring to just the small amount of communication that I have
5 been seeing as we have been transitioning many of these
6 financial responsibilities over to me. And let's see, we've
7 got bilateral reviews. We've got communication. We also have
8 just figuring out the best system of controls that we can
9 implement internally so that we can be compliant with this
10 ruling.

11 Q Now, we understand that there are certain court ordered
12 obligations in order to provide payments to RLI, correct?

13 A That is correct.

14 Q And are you familiar with the filing on August 1st, 2021,
15 that was filed by RLI?

16 A I'm -- I was not directly a party to that filing, but I
17 have been made aware of it, yes.

18 Q Are you aware of the amount that RLI claims that -- what
19 they received in collateral for a security payment from Nexus?

20 A I believe it was approximately \$9,000.

21 Q Did you review that amount in relation to (inaudible) --

22 A I'm sorry, could you repeat that question?

23 Q Did you review that amount in relation to the payments
24 that Nexus has claimed?

25 A I did. I compared it to the amounts that we have claimed

R. Wells - Direct

1 to the amounts that I have seen exit our bank account, yes.

2 Q And what did you discover?

3 A What did I discover, is that what you asked?

4 Q Uh-huh. Yes, ma'am.

5 A I discovered that during the time period that RLI
6 represented that we actually made substantially more payments
7 than \$9,000.

8 I'm sorry, I apologize. Could I please get some water?

9 (Pause.)

10 Q What did you review -- determine that there was a material
11 inaccuracy in the amount that RLI had reported to receive
12 versus what Nexus had paid?

13 A I'm sorry, could you repeat that? The sound sort of went
14 out.

15 Q What did you review to determine that there was an
16 inaccuracy with the amount that RLI reported to have received
17 versus what Nexus has stated they paid?

18 A I reviewed our bank records, the bank records that were
19 produced by the bank directly.

20 Q And in those review of bank records, is one of those banks
21 TrustCo?

22 A Yes, it was.

23 Q Did you write a declaration to this Court with regards to
24 this?

25 A Yes, I did.

R. Wells - Direct

1 Q Would you recognize that declaration if it was shown to
2 you?

3 A Yes, I would.

4 MS. JOHNSON: At this time I would like to have my
5 co-counsel, Mr. Anderson, show Ms. Wells the declaration,
6 including the exhibits that are attached.

7 THE WITNESS: I wonder if the audio would be better
8 if I turned the speaker on? Is that what that's for?

9 THE CLERK: No, ma'am.

10 Ms. Johnson, when you move around, you fade in and
11 out. So if you can stay closer to your speaker, that would
12 help.

13 BY MS. JOHNSON:

14 Q Now, that document that you're holding in your hand,
15 Ms. Wells, is that your declaration?

16 A Yes, it is.

17 Q And if you look to the back, are those exhibits attached,
18 or are those the exhibits that you refer to in your
19 declaration?

20 A Yes, those appear to be for the period ending July 31st.

21 Q Is this a true and accurate reflection of the declaration
22 that you made?

23 A Yes, it appears to be so.

24 Q Has it been altered in any way?

25 A I don't detect any alterations.

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1 MS. JOHNSON: At this time I'd like to offer as
2 Defense 1 Rebecca's signed RLI declaration.

3 THE COURT: Any objection?

4 MS. KATSANTONIS: No, Your Honor.

5 THE COURT: Ms. Wells's declaration will be admitted
6 as Defendant's 1. It will be received.

7 (Defendant's Exhibit 1 marked and admitted.)

8 BY MS. JOHNSON:

9 Q Now, what did you actually discover was paid to RLI in
10 reviewing these TrustCo bank records?

11 A Well, as I stated before, I discovered that I had -- I
12 discovered that we had paid considerably more than that \$9,000.

13 Q And what was that amount that was actually paid by Nexus?

14 A I'm going to just check my notes just to make sure I get
15 the amount right, but it was \$41,557.20.

16 Q Okay. Did you check any other accounts to show disparity
17 in payments of what RLI was claiming and what Nexus had paid?

18 A I did not check accounts; however, I reviewed the credit
19 card payments advice that were produced by RLI's credit card
20 system, which I believe we referred to in earlier testimony.

21 Q And is that what you refer to as Exhibit B in the back of
22 your declaration?

23 A Yes, it is.

24 Q And what is Exhibit B?

25 A Excuse me?

R. Wells - Direct

1 Q And what amounts does Exhibit B say?

2 A Oh, those five payment advice or receipts total \$50,000.

3 Q So in total for the payments made to RLI with regards to
4 what they've claimed, the 9,000 -- the total amount that Nexus
5 has actually paid?

6 A Well, the total amount as of July --

7 Q Let me be clear. As of the time that you noticed a
8 discrepancy from RLI's August 1st filing, we've stated that
9 there was 41,000 and change and then 50,000. So what would
10 that total actually be?

11 A I usually don't make a practice of doing math in my head,
12 but fortunately with the \$50,000, it was \$91,000 that had been
13 paid by them.

14 THE COURT: Aren't those \$50,000 in payments, though,
15 payments that related to bonds that were breached in the past?

16 THE WITNESS: That is my understanding.

17 THE COURT: Right. And so that's not -- that is
18 not -- those are not payments that go to the collateral
19 obligations under the Court's order. How much of the \$41,000
20 or \$42,000 figure you mentioned were for past breach bonds
21 versus payments of collateral?

22 THE WITNESS: Well, it is -- as an employee of Nexus
23 Services, it is not my responsibility -- I would overstep if I
24 were to tell them how to apply those payments.

25 THE COURT: No, I'm not asking that. I'm asking you,

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1 of the \$42,000, how much is for past breach bonds versus
2 payments for collateral?

3 THE WITNESS: That's a good question, and it probably
4 is a good opportunity to clarify the fact that those -- those
5 payments are payments that I confirmed after the fact. I saw
6 that the payments left the bank account. I did not initiate
7 those payments, but I observed that they --

8 THE COURT: Okay. So the answer to my question is
9 you don't know how much of that is for past breach bonds versus
10 the amount of collateral; is that right?

11 THE WITNESS: That's correct. I'm sorry I didn't
12 state it more concisely.

13 THE COURT: How much money does Nexus Services bring
14 in on an income basis every month?

15 THE WITNESS: Every month -- you know, I --

16 THE COURT: You're the chief financial officer.

17 THE WITNESS: You're right. The amount of income
18 that we bring in on a monthly basis fluctuates considerably,
19 and it has drastically --

20 THE COURT: How about during the four months that
21 you've been employed there?

22 THE WITNESS: Over the last four months, I believe on
23 average it's been about 1.2 million.

24 THE COURT: And --

25 THE WITNESS: That's the number that I use to just

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1 start implementing some controls.

2 THE COURT: Okay. Income of 1.2 million. What kind
3 of expenses does Nexus Services have?

4 THE WITNESS: To be honest, at this point, because we
5 are so focused on pulling that data together, I don't yet have
6 a conclusive way to be able to determine that.

7 THE COURT: Okay. So you don't know whether Nexus
8 Services is operating in the black or in the red?

9 THE WITNESS: Unfortunately, right now it would be
10 very difficult for me to say that, yes.

11 THE COURT: Okay. Go ahead.

12 BY MS. JOHNSON:

13 Q And is that difficulty in being able to determine how
14 Nexus is operating, is that directly related to the
15 implementation of NetSuite?

16 A It is. It's directly related to where we are in the
17 implementation of NetSuite. It's also related to the large
18 quantity of transactions that we have. Like, it's a massive
19 amount of data. And that's the whole purpose of having
20 NetSuite in place, so that we can compile the data and make it
21 into usable -- be able to make effective business decisions
22 based on that info.

23 Q Will NetSuite consolidate the historical data that Nexus
24 has with its other operating systems -- (inaudible).

25 A I'm sorry, the last part that you said, would you please

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1 repeat that?

2 Q Would NetSuite consolidate the historical data of Nexus,
3 along with its current operation?

4 A First of all, I do want to clarify when you use the word
5 "consolidate" the information, that does tread a little bit
6 into some accounting standards. And especially in this
7 environment, I want to be very clear that the consolidation
8 used in this context refers to just pulling the data together
9 and summarizing it into a usable format.

10 And as far as pulling in the historical data, the
11 intention, once the system is fully operational, is to have
12 historical information -- detailed historical information in
13 the system effective January 1, 2021, and then summarize maybe
14 prior year historical information once that information is
15 ready.

16 Does that answer your question?

17 Q Yes.

18 Are you aware of the 20 percent commitment? Do you have
19 knowledge of that?

20 A I have knowledge of the 20 percent payments, yes.

21 Q And how do you have knowledge of that? Do you have a hand
22 in determining that?

23 A I don't have -- I have not yet determined that amount
24 myself, but I was able to go in after the fact and confirm the
25 20 percent compared to -- the 20 percent payments compared to

R. Wells - Direct

1 revenue.

2 Did that answer your question?

3 Q In confirming those payments, are you saying
4 Nexus -- (inaudible) --

5 A I'm sorry, could you please repeat that?

6 Q Yes. In confirming the 20 percent revenue, is it your
7 testimony that Nexus has made good on paying that 20 percent
8 revenue since July 15th?

9 A Based on my calculations, if you look at the revenue
10 numbers from the date range with some variations, depending --
11 you know, trying to control for a lot of different
12 perspectives, it's my -- it has been my observation, and I've
13 been able to confirm that we have paid more than 20 percent
14 based on the last little over a month of revenue activity.

15 THE COURT: What do you mean when you say trying to
16 control for a lot of different perspectives? What does that
17 mean?

18 THE WITNESS: Well, this could be my getting into
19 understanding both parties to this matter and trying to
20 understand the goals of both parties of this matter, and
21 because of the -- because of my understanding of the -- of the
22 motion on July 15th, from my perspective it was a little bit
23 unclear. And it isn't to say that it was written unclearly.
24 It's just the way I interpreted it at the time when I was doing
25 this examination, it looked like there was some ambiguity as to

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1 whether the remittance would be compared to the revenue as of
2 the beginning of July or the middle of July when reviewing that
3 20 percent. I was able to find that -- in both cases that we
4 did exceed that 20 percent when compared to revenue for that
5 period alone.

6 THE COURT: When you use the term "revenue," what are
7 you referring to?

8 THE WITNESS: That's a really good distinction to
9 make. When I'm looking at revenue, I'm looking at topline
10 remittance that we have received from our participants per day.

11 THE COURT: When you say "we," who is "we"?

12 THE WITNESS: Nexus Services, Inc.

13 THE COURT: What about the subsidiaries, Nexus Libre
14 or Homes by Nexus?

15 THE WITNESS: You know, for this -- I can see a lot
16 of room for different interpretations, but because the --
17 because this particular matter is so closely related to
18 participants and the inflows coming in from participants and
19 the -- and because those inflows do make up the bulk of all of
20 our subsidiaries' overall revenues, I've been focusing
21 primarily on that revenue.

22 THE COURT: The revenue for Nexus Services, Inc.?

23 THE WITNESS: I should clarify that. It is
24 technically revenue from Libre.

25 THE COURT: What about Homes?

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1 THE WITNESS: In 2021, it is my understanding that
2 Homes is essentially operated as a completely separate entity.
3 And that is a reflection of the willingness for Nexus and upper
4 management at Nexus to take the advice of structure --
5 recommendations from external parties when it makes sense.

6 THE COURT: Okay. So just so I can understand what
7 you're saying, revenue -- when you say the word "revenue,"
8 you're talking about dollars that come into Nexus Services,
9 Inc., correct?

10 THE WITNESS: Through Libre, yes, because it is
11 associated specifically to the participant payments.

12 THE COURT: All right. Go ahead, Ms. Johnson.

13 MS. JOHNSON: Thank you, Your Honor.

14 BY MS. JOHNSON:

15 Q Now, what exactly has Nexus paid in total?

16 A To date?

17 Q Uh-huh.

18 A I'm showing as of the last time I checked this -- I'm just
19 referring to my notes -- but from our perspective -- and this
20 doesn't account for delays with ACH. I'm still unclear at this
21 point if that delay in ACH processing is more like a two-day or
22 a five-day. When I was comparing some of the dates from the
23 previous testimonies, it looked like it could -- at this point
24 in time it appears as though it could be more like a five-day
25 delay, which I'm pretty shocked about. But, you know, these

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1 are strange times we're living in. So it could be associated
2 with that.

3 But as of the last date that I checked, including that
4 \$50,000 of payments that there's some discussion about the
5 application of, I'm showing that we have had \$236,675.40 clear
6 our bank accounts. And that also includes the receipts for the
7 credit card payments.

8 THE COURT: Okay. And is that -- just so I'm clear,
9 Ms. Johnson, that 236,675.40 that you just mentioned, that is
10 cleared to RLI?

11 THE WITNESS: Clear in what sense, sir?

12 THE COURT: You say it cleared our bank accounts to
13 RLI. So is this money that you say Nexus has paid to RLI,
14 236,675.40, since July 15th?

15 THE WITNESS: Since July 15th -- I believe that
16 particular dollar amount includes payments that were made
17 before July 15th. That total, 236,000, includes the early July
18 payments. And by clear, I want to be very clear on this, that
19 is -- those are funds that have left our bank account. We no
20 longer have control over those funds.

21 THE COURT: Okay. And when does the start of that
22 period occur?

23 THE WITNESS: The start of that payment period?

24 THE COURT: Yeah, no, you say it's before -- excuse
25 me -- it's before July 15th. So how far back does it go, do

R. Wells - Direct

1 you understand?

2 THE WITNESS: That 236,000 that I referred to
3 includes payments from July 1 until -- July 1 -- I want to be
4 clear on that -- through -- the last one that I'm showing left
5 our account on August 6. So payment dates through July 1 to
6 August 6.

7 THE COURT: All right. Thank you. Go ahead,
8 Ms. Johnson.

9 BY MS. JOHNSON:

10 Q And have there been any other payments that are currently
11 pending that may not have left the Nexus bank account yet, but
12 have been initiated?

13 A Yes. I didn't have time to check the status of this this
14 morning, but it is my understanding that today they are going
15 to be receiving -- I am just referring to my notes -- they
16 should be receiving \$4,227.60 today. And it's possible that
17 yesterday we at least had -- we should have -- like, I
18 anticipate being able to pull up the checking account today.
19 And I'm assuming that I will see a payment of \$13,230 that had
20 been scheduled to go out on the 9th yesterday -- yeah,
21 yesterday.

22 Q So another 18,000 roughly in payments pending?

23 A Yes.

24 Q Okay. Now, with regards to some of the payments, Nexus
25 had claimed to do daily payments, correct?

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1 A That is correct.

2 Q Okay. So we have payments on -- do you have payments on
3 July 1st to RLI?

4 A We do. On our end, I am showing that we do have payments
5 that went out on July 1st.

6 Q Do you happen to know how much that was for?

7 A Would you please repeat that?

8 Q Do you happen to know that amount?

9 A The amount?

10 Q Uh-huh.

11 A That was \$15,500.

12 MS. KATSANTONIS: Your Honor, I'm sorry to interrupt,
13 but can we see what document she is looking at?

14 THE WITNESS: They're my notes.

15 THE COURT: Those are your notes?

16 THE WITNESS: Yes, they are.

17 THE COURT: Okay. You can ask her on
18 cross-examination.

19 MS. KATSANTONIS: Thank you, Your Honor.

20 THE COURT: She's referred to them, so you can look
21 at them.

22 Go ahead, Ms. Johnson.

23 BY MS. JOHNSON:

24 Q And on July 2nd, was there a payment made?

25 A Yes, I believe there was.

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1 Q And, in fact, was there more than one payment made on July
2 2nd?

3 A Yes. From the records that I was able to confirm, there
4 had been one payment in the amount of \$3,749.20 and another
5 payment in the amount of \$5,575.80.

6 Q Okay. And then you have payments on July 7th?

7 A Yes.

8 Q Okay. And what were those payments?

9 A On July 7th, our records showed that there was a payment
10 in the amount of \$11,661.60 and another for \$4,836 -- I'm
11 sorry, \$838.20.

12 Q And then we have payments again on July 8th?

13 A Yes, that's what I confirmed on our records.

14 Q Okay. And what about -- when was the next payment made
15 after July 8?

16 A I'm sorry, would you please repeat that?

17 Q When was the next payment made after July 8th?

18 A When was it, or what was it, how much?

19 Q When was it -- both. I'll ask you one at a time, though.
20 When first?

21 A I was able to confirm that two payments were made on July
22 8th; one in the amount of \$4,133.60 and the other in the amount
23 of \$18.

24 Q Okay. And what about July 15th, was there a payment made
25 then?

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1 A On July 15th?

2 Q Uh-huh.

3 A Yes. I was able to confirm that one payment -- oh, yes,
4 one payment was made on July 15th in the amount of \$10,000.

5 Q And what about the next day?

6 A On the next day I was able to confirm that one payment was
7 made also in the amount -- oh, actually, two payments were made
8 in the amount of \$10,000 each. So a total of \$20,000.

9 Q Okay. And then we have a little bit of jump in days, and
10 we go to July 20th. What was paid on July 20th?

11 A On July 20th, I was able to confirm that we made a payment
12 in the amount of \$5,000.

13 Q And what about the 25th?

14 A I'm sorry, you said the 21st?

15 Q The 25th.

16 A The 25th, I'm showing that on the 25th we made a payment
17 in the amount of \$10,000.

18 Q And then again how about the 27th, were there payments
19 made on the 27th?

20 A There was also -- there were two payments made on the
21 27th, one in the amount of \$7,453.40, and the other payment in
22 the amount of \$10,000.

23 Q And just a few more. What about the 28th, were there
24 payments made on the 28th?

25 A On the 28th, I was able to confirm that one payment was

R. Wells - Direct

1 made in the amount of -- I'm sorry, you said the 28th; is that
2 correct?

3 Q Yes, ma'am.

4 A \$8,775.

5 Q And the 29th?

6 A On the 29th, I confirmed that \$7,053.40 was made as just
7 one payment.

8 Q And what about the 30th?

9 A On the 30th, I was able to confirm that \$8,992.80 was
10 paid.

11 Q What about August 2nd, were there payments made on August
12 2nd?

13 A Yes, there were two payments by my confirmation. One was
14 in the amount of \$4,279.60, and the second in the amount of
15 \$3,785.20.

16 Q What about August 3rd?

17 A On August 3rd, I confirmed that \$7,285.20 was made as a
18 payment, as well as an additional \$4,000.

19 Q And August 4th we have quite a few payments going out. Do
20 you know those numbers?

21 A Yes, fortunately. The first payment was in the amount --
22 should I go down and list off the dollar amounts for those?

23 Q You can either give an approximate total, or you can list
24 the amounts, whichever you're more comfortable with.

25 A There was over \$60,000 made in payments on August the 4th.

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1 Q Now, Ms. Wells, there are some dates that payments were
2 not made when we were walking through all of this. What is the
3 explanation there for the few dates that payments were not
4 made?

5 A Well, it is my understanding that the gaps in those dates
6 had a lot to do with frustration with the payment method, with
7 miscommunication about payment method, preferred payment
8 method, limits on credit card transactions where we were
9 attempting to make these payments.

10 I believe there was another matter. Oh, there definitely
11 was an impact with the lags in payment due to some dates
12 coinciding with bilateral reviews.

13 Q Would some of those dates be that time period between July
14 20th through the 25th?

15 A I believe so. It is my understanding that's the case.

16 Q The 21st through the 24th, you lost the ability for
17 payment?

18 A That is my understanding.

19 Q Now, are you aware of caps -- caps put in place previously
20 by Nexus on money to be received -- not Nexus, but by RLI with
21 how much money could be received on a payment from Nexus?

22 A I apologize, I did not understand the first part of what
23 you said. Am I familiar with caps?

24 Q Yes, the caps that RLI had in place prior with regards to
25 how much --

R. Wells - Direct

1 A Oh, you're referring to the credit card caps, the limits
2 for our payment processing; is that right?

3 Q Yes, ma'am.

4 A Yes. Yes. And that's what I was referring to earlier.

5 Q So what are those caps?

6 A It's my understanding that we can't pay more than \$10,000
7 by credit card.

8 Q Is that why there is multiple payments made?

9 A In a few of these cases, yes.

10 Q So in essence we had to make multiple payments in order to
11 keep good on our 20 percent promise, right?

12 A Yes, that's my understanding.

13 Q On all of those amounts that you have stated, is that
14 consistent with the assertion from RLI that Nexus had only paid
15 9,283 -- August --

16 A The numbers speak for themselves.

17 THE REPORTER: I'm sorry, can you repeat that
18 question for me, please? I couldn't hear it fully.

19 BY MS. JOHNSON:

20 Q Do you have a problem working with the financial
21 accountant, Mr. -- and I don't want to misstate his name, Your
22 Honor; I don't want to butcher a name -- Mr. Peroutka?

23 A I'm sorry, could you repeat the question?

24 Q The forensic accountant, Mr. Peroutka, do you have a
25 problem working with him in order to make RLI -- (inaudible) --

R. Wells - Direct

1 A I apologize. The middle of the sentence that time. Do I
2 have a problem with the forensic accountant?

3 Q With working with the forensic accountant in order to
4 bring comfort to RLI?

5 A Oh, absolutely not. In fact, up to this point, I have
6 found while they're voluminous, all of the notes and comments
7 and feedback that I have been privy to from the bilateral
8 reviews and from the forensic accountant have -- have been
9 helpful while we are establishing some of the internal controls
10 that are going to ensure that we can produce accurate and
11 timely financial reports.

12 Q And Ms. Wells, are you committed to getting things under
13 control with regards to Nexus -- (inaudible) -- compliance?

14 A Absolutely. It's my number one imperative first even
15 compared with the -- the pressing need to get our financial
16 systems up to date. All models and budgets and forecasts that
17 I start begin with RLI and making sure that we -- we pay at a
18 minimum 20 percent on an ongoing basis.

19 Q And so, this payment -- you know that the Judge has
20 concerns because every month there appears to be no compliance
21 with this Court's order. But since you've been the chief
22 financial officer, have you seen an improvement in that?

23 A Well, the numbers and the payment pattern speak for
24 themselves.

25 Q Okay. Now, do you have any solutions that you feel would

R. Wells - Direct

1 benefit this entire -- this entire issue? Do you have any
2 solutions that would help for those payments to come in at a
3 better rate, taking into account the different payment modes
4 and everything that we talked about?

5 A Well, yes. One solution that I'm aware of is with getting
6 the merchant account so that it will automatically send 20
7 percent of our topline revenue on a daily basis directly to
8 RLI, which not only would cut out ACH lag -- which, like I said
9 earlier, I'm unclear at this point whether that's two days or
10 five days. It sounds more like it's five days based on some of
11 the prior testimony. But this would -- this would ensure that
12 RLI gets funding for this obligation at the same time that we
13 receive our operating capital. Usually, you know, my
14 assumption is that this would operate much like any other
15 merchant account distribution that I've witnessed over my years
16 of practice. And that looks like when we get the -- when we
17 get the criteria set up and the deposit amounts set up in the
18 merchant account, then as soon as we get funding, they're also
19 getting funding at the same exact time. And it is also notable
20 that with this particular solution, it makes it so that we are
21 completely hands off with this funding. This is something that
22 would be controlled by the merchant account after we set up
23 this -- this provision, this capability.

24 Q And would this be something more effective and less
25 harmful to Nexus Services than appointing a receiver?

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1 A I would say so. It definitely would not be without its
2 challenges, because 20 percent of our daily cash flow --
3 especially with some of the monthly business cycles that I have
4 been seeing that I'm going to have to be planning for -- you
5 know, it is definitely going to require some difficult
6 decisions. But I believe that with those guidelines and with
7 the hands-off -- with the hands-off nature of this transaction
8 and this funding, it in a sense accomplishes something that's
9 very similar to even what the opposing counsel has recommended
10 earlier. In fact, I recall earlier the opposing counsel -- and
11 I don't want to misrepresent or speak out of turn, but I seem
12 to recall the opposing counsel even recommending that we send
13 like 20 percent of net income. And I don't know if -- you
14 know, if counsel was aware of the difference in that
15 terminology, but that suggestion would indicate that our
16 expenses are taken out of it. We're recommending something
17 that's even more aggressive, and it will -- it's going to
18 create some challenges, but it's going to be something that we
19 can plan for a little bit better, something that's going to
20 give us the autonomy that we need to operate this business in a
21 way that has been successful despite so many challenges over
22 the years.

23 Q And if we were to institute those direct transfers out,
24 approximately in your best guess as your position allows you
25 to, how long do you think it would take to satisfy the

R. Wells - Direct

1 judgment?

2 A How long would it take for what? I'm sorry.

3 Q For there to be satisfaction of the judgment?

4 A Well, let's just round off the judgment with legal fees.

5 You know, I've heard a few different numbers being thrown

6 around today depending on timing and counsel and all of that.

7 But let's just round it off at \$3,000 -- no, let's add some

8 zeros to that -- \$3 million for the overall judgment, then that

9 would just be -- you know, like, let's take this month's --

10 this prior month's activity as an example and let's say that's

11 going to be averaged out. I don't have a calculator in front

12 of me. And especially after a day like today, I'm not going to

13 do that in my head. But if someone would be so kind as to

14 divide \$3 million by, say, \$240,000, that's how many months it

15 would take to satisfy this judgment.

16 But the beauty of this sort of plan is that as our

17 business grows -- which hopefully we are going to be more

18 empowered to do with a strategy like this -- that means that

19 that obligation would be paid off even sooner on top of the

20 fact that I believe all of us are extremely motivated to get

21 that obligation taken care of. So to the extent possible,

22 which I feel fairly confident in it, my intention -- my hope is

23 to be able to satisfy that a lot sooner than what that

24 straight-line division timeline would suggest.

25 Q These are all methods and solutions that have been

R. Wells - Direct

1 previously offered to RLI, right?

2 A I have not been party to those conversations myself, but I
3 have -- I have been made aware of the fact that many different
4 solutions have been proposed to RLI.

5 MS. JOHNSON: Pass the witness.

6 THE COURT: Okay. I have a couple of questions
7 before cross-examination.

8 How long is it going to take to implement this
9 merchant direct -- next week merchant direct transfer out plan
10 that you have?

11 THE WITNESS: With respect -- I do want to be
12 extremely clear with our terminology, because I do know that
13 there has been a lot of discussion of different databases,
14 softwares, etc. The merchant account at the time being is
15 Fluid Pay. That is separate from NetSuite. So I just -- I
16 want to be crystal clear on that.

17 THE COURT: Let me ask you this --

18 THE WITNESS: But the essence --

19 THE COURT: The question is: How long is it going to
20 take to implement the merchant account?

21 THE WITNESS: It's my understanding that it could be
22 fully functional within five days.

23 THE COURT: Okay. That's my first question.

24 My second question is this: You have talked about
25 that being a hands-off process, correct?

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1 THE WITNESS: Yes.

2 THE COURT: The process now that has gone on for the
3 last month, I would take it that would be a hands-on process,
4 correct?

5 THE WITNESS: Would you repeat that? I want to be
6 clear.

7 THE COURT: Yeah, over the last month, how has -- who
8 has made the decision -- how has the decision been made to pay
9 the 20 percent?

10 THE WITNESS: It's been directly administered
11 through -- like Richard Moore has administered that directly;
12 however, I was able to go in with third-party verification
13 through bank statements, through the credit card receipts, and
14 confirm that those amounts actually went out.

15 THE COURT: Yeah, because your testimony was: I was
16 able to confirm these amounts went out. So you weren't
17 involved in the decision -- in the determination on a daily
18 basis to pay that 20 percent?

19 THE WITNESS: At that point in time, and since we're
20 at month four of my on-boarding into this role and taking over
21 many of these responsibilities, I have not been administering
22 that. It's been really a tricky dance and balance of
23 priorities with getting these things compliant, getting
24 historic information in the database so that -- I mean,
25 honestly without the historic information, it becomes difficult

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1 for me to -- difficult, but not impossible, for me to create a
2 track record that empowers the organization.

3 THE COURT: All right. So Mr. Moore has been looking
4 at the figures and saying, Pay this amount?

5 THE WITNESS: Yes. And I do -- would you mind if I
6 add something to this?

7 THE COURT: Sure. Go ahead.

8 THE WITNESS: My intention after our -- after we
9 implement this -- if we do implement something like this, if
10 the opposing party is agreeable, would be to not only oversee
11 that these payments are being made, tie it back to what our
12 daily revenue is, but also take a look at that on a monthly
13 basis and reconcile it back to what our actual amount is,
14 because this is -- this is an extremely important matter. And
15 this is one that I am very motivated to see that is fulfilled.
16 And I -- if I don't monitor that, which I would be negligent
17 not to -- without monitoring the fact that these payments are
18 actually made at the appropriate amount, and checking in on
19 that on a monthly basis as a course of our routine procedures,
20 that isn't what we're going for. I want more structure in
21 place for that. So in addition to checking in on the monthly
22 amounts that would go out tying that back to revenue, my
23 intention is to go back and verify the amounts that go out on a
24 monthly basis to ensure that this does get implemented the way
25 it should be.

R. Wells - Cross

1 THE COURT: When it's done in a hands-off basis,
2 would it be 20 -- let's say somebody pays \$500, okay? It comes
3 into your income. Would that 20 percent immediately come out
4 of that 500, or is it like a daily total, or something like
5 that?

6 THE WITNESS: I am not -- with my experience in
7 general with merchant accounts and with funding from merchant
8 accounts, it does happen on a daily basis. And especially with
9 something like this and with the number of transactions and
10 revenue transactions that come through from our participants,
11 it would be -- RLI would -- they would not be happy with
12 getting a part transaction 20 percent. It would be just a
13 nightmare.

14 THE COURT: It would be lots of little amounts.
15 Okay. All right. Thank you for that, Ms. Wells.

16 Let's see what cross-examination Ms. Katsantonis
17 might have.

18 MS. KATSANTONIS: Thank you.

19 THE COURT: If you're vaccinated, you can take your
20 mask off while speaking.

21 MS. KATSANTONIS: Oh, sorry. I am vaccinated.

22 CROSS-EXAMINATION

23 BY MS. KATSANTONIS:

24 Q You became the CFO of Nexus in April; is that correct?

25 A It was the very end of April, yes.

R. Wells - Cross

1 Q Very end.

2 So you've only been there for May, June, and July?

3 A Correct.

4 Q So three months?

5 A Going on -- working on four.

6 Q And who was the CFO prior to you?

7 A That role really was in a state of transition. It is my
8 understanding that the majority of the CFO responsibilities
9 fell on Richard Moore.

10 Q And doesn't Richard Moore -- isn't he the person at Nexus
11 who directs all disbursements?

12 A At this point in time, because I haven't been able to
13 establish a system of controls and documentation that I feel
14 comfortable with, yes, he has been doing that up until now.
15 That is -- my anticipation is that that's going to be changing
16 within the next two weeks.

17 Q Ms. Wells, do you still maintain any affiliation with
18 Fusion CPA?

19 A Not in a substantive capacity. There were some -- like I
20 said before, there was an engagement that I had worked on with
21 Fusion when I rolled off of my consulting -- my contracting on
22 Nexus before where I believe for the most part that is wrapped
23 up, but that's been within the last two weeks. So I hesitate
24 to say that I'm not going to get any further questions on that
25 engagement.

R. Wells - Cross

1 Q And what affiliation do you have with Wells Tarkington,
2 LLC?

3 A That was a firm that I had started as my own practice.

4 Q Is that firm still in existence?

5 A No. Those clients dissolved. They no longer were my
6 clients. One was at the beginning of the year; another -- I
7 believe it was within Q1 of 2021.

8 Q When you were at Fusion CPA, you worked on reconciling
9 Nexus's historical financial records for 2017; is that correct?

10 A Correct.

11 Q So did you do any work on '18, '19, or '20?

12 A No. I rolled off of that engagement before we moved on to
13 those phases of that accounting.

14 Q All right. And so at the time you left, were the
15 reconciliation efforts for 2017 complete?

16 A They were in a state that allowed us to prepare the --
17 well, someone else on the team -- I did not do it -- but
18 someone else was able to prepare the tax return.

19 Q Prepare the -- pardon?

20 A Tax return.

21 Q Okay. And did you issue a compilation, review, or audit
22 report with your work?

23 A No, I didn't.

24 Q Okay. And your affidavit states, to the best of your
25 recollection, Nexus accepted the outside consultant

R. Wells - Cross

1 recommendations. What were they? What were the
2 recommendations?

3 A Oh, there were so many. The one that I thought of
4 anecdotally when I was preparing for today was on day one, it
5 was something as simple as -- it was the day that I met them
6 face to face for the first time. I think I had had a few
7 conversations with upper management at that point, but I was
8 just trying to diagnose where things were in their books. And
9 one of the first things that I look at for any organization is
10 if they have been able to utilize like a cutoff date which
11 makes it so that any prior period accounting information is
12 password protected. And the moment I recommended that we go
13 ahead and implement that, they jumped on it. And it's just --
14 you know, it's been everything from expense reports,
15 documentation. The other example that we mentioned earlier had
16 to do with the properties.

17 Q Okay.

18 A Those are just a few. I'm sure there's more.

19 Q So with regard to your affidavit, you would say the
20 decision was made by Nexus to move to NetSuite around late 2019
21 or early 2020?

22 A I believe, yeah, that timeline makes sense.

23 Q Where did you get that information from?

24 A Where did I get the information that they were moving?

25 Q That Nexus made the decision to move to NetSuite around

R. Wells - Cross

1 late 2019 or early 2020?

2 A In my communication with my colleagues about the
3 engagement, we discussed that.

4 Q What engagement?

5 A The accounting engagement.

6 Q For now in April of -- now, your current position?

7 A No. The engagement that I worked on that you had
8 mentioned before when I was contracting with Nexus was for the
9 2017 accounting period. When I was working on that portion of
10 the engagement, that decision had -- they had started exploring
11 that as a possible best solution.

12 Q We're almost two years later than late 2019 when that
13 decision was made. Why -- why hasn't the Nexus accounts
14 migrated to NetSuite in those two years?

15 A Well, I often compare implementations to building a house.
16 I make that comparison regardless of the organization that I am
17 referring to.

18 Q Is it your contention that today -- it's true that today
19 they have not migrated their systems over to NetSuite, correct?

20 A Not in a complete sense, and not in any -- not in -- what
21 is in NetSuite is not complete.

22 Q And, in fact, you stated the records are inaccurate and
23 can't be relied on, right -- the records in NetSuite?

24 A Yes. With any normal accounting disclosure the whole
25 purpose of providing any reporting from that system which had

R. Wells - Cross

1 been disclosed was not to rely on for any management or
2 accounting decisions, but rather to show transparency into
3 where things were with that migration.

4 Q So consistent with your affidavit, the profit and loss
5 statements or balance sheets, any of that financial data in
6 NetSuite is inaccurate at this point in time, correct?

7 A In its current state, it is absolutely inaccurate.

8 Q And you state that there are -- with regard to any other
9 records, that there is records that have yet to go through your
10 quality assurance procedures, right?

11 A Without knowing which records -- would you mind pointing
12 me to the paragraph in the affidavit?

13 Q I'm at the bottom of paragraph 16 of your affidavit.

14 A Would you please repeat your question?

15 Q Yes. So with regard to NetSuite, you assert that there
16 are records that have yet to go through your quality assurance
17 procedures that have not been entered into NetSuite, right?

18 A That is correct.

19 Q And are those records source documents? Would you refer
20 to them as source documents?

21 A Well, that's a multilayered question.

22 Q There's records that exist that are going to be
23 implemented in NetSuite, correct?

24 A That is correct.

25 Q And they have not, correct?

R. Wells - Cross

1 A As of today, no, they have not.

2 Q And have those records been provided to RLI, to your
3 knowledge?

4 A To my knowledge, I believe most of them have.

5 Q Which documents?

6 A Bank statements, the profit and loss and other reporting
7 that we pulled from NetSuite with the disclosure. It's the
8 paranoid accountant in me. I have to maintain the disclosure
9 that those are not --

10 Q Accurate --

11 A -- for the purpose of reliance.

12 Q And you state in your affidavit further that current
13 financial records depend on accurate historical financial
14 records, right?

15 A That is correct.

16 Q And that you're still waiting compilation of
17 reconciliation, correct?

18 A I want to be very clear with the language in that
19 question.

20 Q I'm reading directly from your affidavit.

21 A Which --

22 Q Paragraph 11.

23 A Okay. There we are. I'm just looking at the context for
24 the use of the word "compilation," because I think --

25 Q You said, "We are still waiting compilation of

R. Wells - Cross

1 reconciliation?"

2 A With due respect, that says, "awaiting completion of
3 reconciliation."

4 Q You're saying you need reconciliation of cash accounts,
5 right?

6 A For the accounts that had activity from 2020 into 2021.

7 Q Well, can't you determine what your cash balance is now by
8 just looking at the online banking portals?

9 A Yes.

10 Q And, in fact, that's what Nexus does on a daily basis,
11 right? They use their online banking portals to determine
12 their cash, as well, in addition --

13 A It is not ideal, but yes.

14 Q And you look at Lightspeed also, correct?

15 A Yes.

16 Q Okay. And isn't it true that the Fluid Pay that you were
17 just talking about with the judge, with regard to paying 20
18 percent from Fluid Pay, that's just credit card transactions,
19 correct?

20 A Let me back up a second. That is credit card
21 transactions, but it's my observation at this point in time
22 that those credit card transactions represent at least 85
23 percent of the total topline revenue for our participants. And
24 that additional percentage that isn't included in there, that
25 is information that would be captured in my additional review

R. Wells - Cross

1 on a monthly basis to make sure that we're complying with it.

2 Q So it is true that it doesn't capture other revenue
3 sources, correct?

4 A A very small amount of -- and it isn't revenue sources.
5 It is payment method, which are completely different things.

6 Q Payment method by a bond principal, right, by cash? Do
7 you have an understanding of where the revenue of Nexus is
8 derived?

9 A Yes, I do.

10 Q Where is it -- from what source does Nexus derive revenue?

11 A The bulk of our revenue comes from program payments from
12 our participants.

13 Q Where else does either Nexus Services Homes or Libre by
14 Nexus derive revenue?

15 A The bulk of your --

16 MS. JOHNSON: Objection to the question. I'm going
17 to ask that the questions be asked individually. These are
18 different organizations, and it could be confusing to the
19 witness.

20 BY MS. KATSANTONIS:

21 Q What is your understanding of where the bulk of the
22 revenues come from for the Nexus entities?

23 A For the Nexus entities as a whole?

24 Q Uh-huh.

25 A The bulk of the revenue for the group of organizations

R. Wells - Cross

1 comes from Libre.

2 Q And where does Libre derive its revenue from?

3 A From program payments from participants.

4 Q And where does Homes derive revenue?

5 A It is my understanding at this point in time that Homes is
6 not affiliated. We have made -- we have made great efforts
7 to -- to move the operation's revenue --

8 Q That's not my question. My question is: Where does
9 Homes -- from what source does Homes derive revenue?

10 A I am the CFO for Nexus Services, Inc. And as such, I can
11 speak to revenue from organizations that are under the umbrella
12 of Nexus Services, Inc.

13 Q Do you know -- do you know what sources of --

14 MS. JOHNSON: Objection. Beyond the personal
15 knowledge of the witness.

16 BY MS. KATSANTONIS:

17 Q Do you know --

18 THE COURT: Overruled. She can answer if she knows.

19 BY MS. KATSANTONIS:

20 Q Do you know what the source of revenues are to Homes? Do
21 you have a general understanding?

22 A Not any -- not enough of an understanding to speak to in
23 this context.

24 Q So you're part of Nexus, you're the CFO, but you have no
25 understanding as to how Homes generates any revenue?

R. Wells - Cross

1 A As of 2021, the operations for Homes was moved outside of
2 the Nexus umbrella.

3 Q Weren't you part of the team that recommended moving Homes
4 out of Nexus Services?

5 A That recommendation came most directly from the tax team.

6 Q At Fusion?

7 A Correct. But that operates as a separate engagement from
8 the one that I was most closely --

9 Q Does Homes receive revenues from rent payments for
10 properties?

11 A Because that is an organization that is not in the Nexus
12 umbrella for 2021, I cannot speak intelligently to that
13 question.

14 Q Okay. Do you have an understanding as to whether or not
15 Nexus -- so you said that Nexus gets the bulk of its revenue
16 from program participants of Libre, right?

17 A From program payments from participants.

18 Q What other sources of revenue does Nexus get?

19 A At this point in time, because those program payments
20 represent such a massive amount like percentage of our overall
21 revenue, that is the portion of our revenue that has most of my
22 attention and that I'm most interested in.

23 Q So do you know of any other sources of revenue?

24 A Only peripherally, but not to any extent that I feel
25 comfortable speaking to today.

R. Wells - Cross

1 Q Well, what do you peripherally know?

2 A You know, with all of the fires that we have going on with
3 this particular matter with the implementation, this has the
4 bulk of my attention. I know from my -- from my experience and
5 from looking at our overall cash flow and our planning, that
6 because the program payments constitute such a massive
7 percentage of our revenue, I know that any additional cash
8 flow, it at least is not significant enough for me to rely on
9 it for massive projections. Yes, it's something that I'm going
10 to have to get into the details of, but --

11 Q Is it your testimony, sitting here today, that you don't
12 have -- that you cannot list any other source of revenue for
13 Libre or Nexus?

14 A That statement is not correct, no, ma'am.

15 Q Okay. So what other sources of revenue can you identify?

16 MS. JOHNSON: Your Honor, I'm just going to lodge an
17 objection again for the record. This has been asked and
18 answered. She does not have knowledge of that. The
19 corporations I believe opposing counsel is digging into are not
20 associated with Nexus. As far as income goes, I believe she's
21 testified to her full knowledge of what the income is.

22 THE COURT: I'll overrule. She may answer the
23 question.

24 THE WITNESS: Would you please repeat the question?

25 BY MS. KATSANTONIS:

R. Wells - Cross

1 Q What other sources of revenue are you aware of?

2 A I am not aware enough of any other sources of revenue to
3 be able to speak intelligently towards them, beyond the fact
4 that they are -- from my examination and my knowledge, they are
5 not material.

6 Q Well, I just want to know what they are. I understand you
7 don't feel you have a big understanding of them, but what do
8 you know is a revenue source just generally?

9 A I have told you what I know.

10 Q Your testimony is you know of no other revenue source to
11 Libre or Nexus?

12 A That's not my testimony. I am aware of the fact that
13 there are other sources of revenue.

14 Q Okay. Is it your testimony you don't know of what those
15 sources are whatsoever?

16 A That's not my testimony.

17 Q Okay. So please identify what sources you are aware of.

18 A I am not -- I don't have enough details about those
19 sources of revenue to be able to intelligently speak about them
20 at this point in time.

21 Q I didn't ask you -- I just want to know what you know.
22 You told me it's inaccurate to say that you can't identify any
23 other sources. I've only asked you to identify those sources.

24 A I cannot speak to that at this point in time.

25 Q So you're refusing to respond?

R. Wells - Cross

1 A It isn't that I'm refusing. I simply do not have the
2 information to be able to respond to this question.

3 Q You just said that you did. I said it's not accurate
4 testimony to say that you have no knowledge whatsoever of any
5 other source of revenue, and you said that's not accurate.

6 A Because I have knowledge that there are other sources of
7 income. I have not -- I have not found that they are material
8 enough to --

9 Q Right. I just want to know what those sources are that
10 you have any awareness of.

11 A I cannot answer that question. I simply don't have enough
12 details about that to answer that question. I apologize.

13 Q So you have no -- you understand there is other sources of
14 revenue coming into Nexus and Libre, correct?

15 A I'm aware enough of them to look out for them when it
16 comes up in the implementation.

17 Q Okay. So what are they? What are you looking out for?

18 A What would -- you know, the big -- I'm trying to think of
19 something to make this as specific as possible.

20 I feel very confident in saying that the bulk of our
21 revenue from my examination so far that is 99 percent of our
22 revenue is represented in the Libre payments. It is something
23 that I'm looking out for as I go through and complete the
24 implementation. And by looking out for it, I'm referring
25 specifically to when we show that there is a deposit in an

R. Wells - Cross

1 account for a segment of the organization that does not
2 typically generate a lot of revenue, at that point in time I
3 would look into that particular detail when I cross that
4 bridge, but I'm already swimming upstream with --

5 Q Have you come across those kind of positive balances?

6 A Positive balances?

7 Q Or positive payments that you're looking into -- you had
8 to look into?

9 A A deposit?

10 Q A deposit.

11 A No, I haven't come across that yet. I haven't been able
12 to get into the details of it that much yet.

13 Q You talked about these credit card payments. Where are
14 the credit card payments derived? Where is the merchant
15 account? What merchant account do you reference with the
16 collection of credit card payments?

17 A I believe our merchant account is currently held through
18 Fluid Pay right now.

19 Q And does Fluid Pay have records of a compilation of credit
20 card payments and then -- that would show, then, the transfer
21 to a bank?

22 A I have not -- I have not reviewed the reports that show
23 that specific detail through Fluid Pay directly. I have been
24 able to trace approximate daily activity from our participants
25 and tie them out approximately to deposits that we receive.

R. Wells - Cross

1 Q And where do you get that source data from the participant
2 payments?

3 A When I'm comparing those two numbers, I'm getting the
4 participant --

5 Q Yeah, I'm trying to identify where you're getting the
6 participant payment numbers from.

7 A I'm getting the participant payment numbers from
8 Lightspeed, and I'm comparing them to deposits that come
9 through our checking account.

10 Q Let me ask you: Have you seen -- are you aware that
11 payments were made by Nexus to Think Global?

12 A I'm -- I am aware of them, yes.

13 Q And is it your understanding that Think Global is a TV
14 production company?

15 A That is my understanding.

16 Q And is it your understanding that those payments are for
17 video production services for a TV series where the Nexus
18 principals appear in?

19 A That is my understanding, yes.

20 Q And did you hear my statement earlier that I saw at least
21 approximately 221,000 in payments for Think Global from January
22 through June of 2021?

23 A Oh, I missed that portion.

24 Q Does that sound about right as to how much money has been
25 spent on Think Global?

R. Wells - Cross

1 A I do not know.

2 Q Do you know that there are another 90,000 in invoices to
3 Think Global just for the month of July?

4 A I wasn't aware of that specific number for that period,
5 no.

6 Q And do you know that these TV shows are streaming on a
7 platform called Unleashed?

8 A I am aware of that, yes.

9 Q And do you know, where are the revenues from Unleashed
10 captured?

11 A Do you know, I haven't gotten into that level of detail
12 for that particular segment.

13 Q So it's your testimony you don't know where that --

14 A That is correct.

15 Q And isn't -- on that platform, isn't there also the sale
16 of cell phones for \$149?

17 A I am not aware of that.

18 Q A month? You're not aware of that?

19 A No, ma'am.

20 Q And you don't know where those revenues go either,
21 correct?

22 A Correct. I don't know.

23 Q And is it also true -- have you also seen the statement --
24 significant payments to Fixify and Fangistics?

25 A I'm aware of some of the payments to Fixify. I'm not as

R. Wells - Cross

1 familiar -- what was the name of the other vendor that you --

2 Q Fangistics.

3 A Fangistics, I'm not as familiar with that particular
4 vendor, so I can't speak to that one.

5 Q Are you aware of the company Entlest?

6 A Not closely.

7 Q Are you aware it's a Richard Moore company?

8 A I am aware of that, yes.

9 Q And are you aware that the Fixify and Fangistics payments
10 go to a member of Entlest?

11 A I'm not privy to the details of how that entity was set
12 up.

13 Q And what about Executive Investigative Consultants,
14 Mr. Schneider, are you aware of payments to Executive
15 Investigative Consultants?

16 A Not in any level of detail.

17 Q And are you aware that Mr. Schneider has user access to
18 Stampli in the Nexus database?

19 A I'm trying to recall. I'm not -- I'm not exactly sure
20 how -- you want to know if I'm aware that --

21 Q Do you know whether Mr. Schneider has user access to
22 Stampli?

23 A I don't know that off the top of my head.

24 Q It's possible?

25 A It is possible.

R. Wells - Cross

1 MS. JOHNSON: Objection. Speculation.

2 BY MS. KATSANTONIS:

3 Q And are you aware of payments to SKDKnickerbocker for
4 \$248,000?

5 A No, I'm not.

6 Q Do you know -- do you know what SKDKnickerbocker does?

7 A No, I don't.

8 Q And is it Mr. Moore who makes and approves all these
9 payments?

10 A Up until this point in time, yes, he has.

11 Q All right. Let's talk briefly about these 20 percent
12 payments you talked about. I just want to briefly show you --

13 MS. KATSANTONIS: Your Honor, I'll just go through
14 two or three of these, so we can be brief.

15 THE COURT: Has Ms. Wells's declaration been
16 admitted?

17 MS. JOHNSON: Yes, Your Honor.

18 THE COURT: It has?

19 MS. KATSANTONIS: I don't think they moved for it.

20 MS. JOHNSON: I did move it. I offered it as Defense
21 1, and there was no objection by counsel.

22 THE COURT: Do you have a copy of it?

23 THE CLERK: I do not.

24 BY MS. KATSANTONIS:

25 Q Ms. Wells, I'm showing you an exhibit. It's an email from

R. Wells - Cross

1 Nexus Services, Richard Moore, to Mr. Harris. And it purports
2 to be a Nexus Services, Inc. payment confirmation; do you see
3 that?

4 A I do see that.

5 Q Have you seen this document before?

6 A This looks familiar. I believe I have.

7 Q Is Mr. Moore the person who generates this payment
8 confirmation sheet?

9 A He is the one who generates it.

10 Q So on this payment confirmation sheet it says that the
11 date of payment is July 8th, 2021, correct?

12 A That is what the date of payment says on this.

13 Q Right. But the confirmation sheet was not provided to
14 Nexus till July 22nd, correct -- I mean, RLI?

15 A Would you please restate that?

16 Q If you look at the top of the email, Nexus Services
17 provided this, quote, receipt to RLI on July 22nd, correct?

18 A That is this date, yes.

19 Q And it purports to say that a payment was made on July
20 8th, right?

21 A That is what this says, yes.

22 Q And it says the payment amount is \$18, right?

23 A That is the amount on here.

24 Q And it purports to say it's towards the 20 percent for
25 July 4th, correct?

R. Wells - Cross

1 A Yes, that is what this says.

2 Q And you were testifying through some records. Based on
3 your records, when is your understanding that the \$18 payment
4 was made?

5 A It isn't necessarily -- my confirmation was that payment
6 was made on July the 8th.

7 Q Based on -- what information are you basing that on?

8 A Let me see. On this particular instance I'm going by
9 memory, but my recollection is that on this particular instance
10 that payment was confirmed as an ACH.

11 Q You don't have any records to show that, correct?

12 A I don't have records, no. I just have notes.

13 Q And I'm going to hand you what was previously marked as
14 Grycz Deposition Exhibit 1.

15 Do you see, according to RLI, they didn't receive that ACH
16 transfer till July 22nd, correct?

17 A I do see that based on RLI's records that they didn't
18 receive it until July 22nd.

19 Q Okay. And the July 22nd date matches the top of
20 Mr. Moore's email when he sent the confirmation, correct?

21 A It does match that date.

22 Q Okay. And you have no -- you have brought no evidence
23 with you or no contemporaneous record to show the payment was
24 made on July 8th, correct?

25 A Correct. Yeah. No, I haven't.

R. Wells - Cross

1 Q All right. Let's look at another one.

2 THE COURT: Did you want to mark that last one as an
3 exhibit?

4 MS. KATSANTONIS: Yes, Your Honor. I'm going to mark
5 all of them. I don't know whether you want to do a compilation
6 exhibit or one each.

7 THE COURT: Let's do them one at a time. That would
8 be Exhibit 3, the last one?

9 MS. KATSANTONIS: Yes, Your Honor.

10 THE COURT: Any objection to that?

11 MR. ANDERSON: No, Your Honor.

12 THE COURT: That's Exhibit 3.

13 This next one is Exhibit 4, marked for identification
14 Exhibit 4.

15 (Plaintiff's Exhibit 3 marked and admitted.)

16 (Plaintiff's Exhibit 4 marked.)

17 BY MS. KATSANTONIS:

18 Q Okay. This is again a payment confirmation email
19 generated by Nexus, right, by Mr. Moore?

20 A It appears to be so, yes.

21 Q And on this one it says it's being forwarded to counsel
22 for RLI on August 2nd, correct?

23 A Please forgive me. I'm having a hard time with all of the
24 different names, because I see Chris Harris, and it is not my
25 understanding that Mr. Harris was counsel.

R. Wells - Cross

1 Okay. I apologize.

2 Q No problem.

3 But it's being forwarded to RLI on August 2nd?

4 A It's being forwarded to Mr. Harris on August 2nd.

5 Q And in this receipt confirmation email it says the date of
6 payment was July 7th, 2021, right?

7 A That is the date on this.

8 Q So almost a month earlier, correct?

9 A That is correct.

10 Q Okay. And the amount is \$8,775, right?

11 A That is the amount that's on this confirmation.

12 Q And based on Mr. Grycz's document -- I just handed you
13 that summary sheet -- he says that RLI received the \$8,775 on
14 August 2nd, right?

15 A That is correct.

16 Q And that matches the date that the receipt was sent to
17 RLI, correct?

18 A That is correct.

19 Q So -- and you have no records of that payment being made
20 on July 7th, correct?

21 A No. My notes were that that payment had been sent out on
22 July 28.

23 Q Right. So your notes say that the payment was sent out on
24 July 28th, not July 7th as indicated in this, quote,
25 confirmation generated by Nexus?

R. Wells - Cross

1 A I also want to add that particular payment should be
2 verifiable on my -- on the exhibit for my declaration. And you
3 should be able to see that according to our -- our records
4 that -- yeah, it went out on July -- what was it?

5 Q 28th is what you show, right?

6 A Correct.

7 Q And not July 7th as set forth in this confirmation,
8 correct?

9 A Correct.

10 Q And in fact, the receipt by RLI of August 2nd, which
11 matches when Mr. Moore sent the confirmation, that seems kind
12 of accurate from what you've been seeing when you talked about
13 ACH payments hitting maybe later, five days later; wasn't that
14 your testimony?

15 A That was my testimony, and that was a ballpark guess. And
16 these are two anecdotal instances.

17 Q I can go through each one. Do you want me to go through
18 another one? I'm happy to. Should we do one more? Let's look
19 at --

20 THE COURT: Counsel, I don't know what the point is.
21 I think you've made your point. Let's move on. I get this,
22 okay?

23 MS. KATSANTONIS: Thank you, Your Honor.

24 THE COURT: It's not lost on me. I remember the days
25 early on in the litigation when they would make payments on

R. Wells - Cross

1 bond breaches and the checks would bounce, or they would
2 backdate things. I mean, I remember all this.

3 MS. KATSANTONIS: Thank you, Your Honor.

4 THE COURT: They're classic slow payers. That's part
5 of this whole thing. You made your point on this.

6 MS. KATSANTONIS: Thank you, Your Honor.

7 THE COURT: This isn't like this has just happened in
8 June or July, okay? We've been dealing with this issue since
9 2018. And the Court is well aware of all the shenanigans that
10 have gone on in the past. And the Court entered an order, and
11 the order has not been complied with. The question is: What
12 should be done about that? That's the question, okay?

13 So let's see what other questions you have for
14 Ms. Wells.

15 MS. KATSANTONIS: Your Honor, thank you.

16 BY MS. KATSANTONIS:

17 Q Ms. Wells, isn't it true that with regard to any of the
18 purported, quote, 20 percent of revenues paid by Nexus to RLI
19 since the hearing of July 15th encompassed only payments for
20 eight days?

21 A I apologize, would you please repeat your question? I
22 didn't understand it.

23 Q The payments that were made by Nexus to RLI that purported
24 to be 20 percent of daily revenue from July 15th until now,
25 isn't it true that there were eight payments that were made?

R. Wells - Cross

1 A I don't have that knowledge in that way offhand.

2 Q For eight days; only for July 4th, 5th, 6th, 7th, 8, 10,
3 11, 12?

4 A I'm confused with the way that I'm hearing this question.
5 Maybe I'm misinterpreting this, but it sounded before like you
6 had asked about what the payments were after the July 15th
7 hearing, and then you're talking about payments that were
8 received early in the month before the hearing. So I'm a
9 little confused.

10 Q Well, you testified that there was 200-plus thousand in
11 payments made from Nexus, right?

12 A Between July 1 and August 6.

13 Q And you have no knowledge -- or you can't testify as to
14 what portion of that amount was for past due invoices paid to
15 RLI versus for collateral payments; is that correct?

16 A Well, I'm leaving it up to RLI to manage their
17 accounting --

18 Q No, I know.

19 A -- and to manage their payment application.

20 Q With regard to the \$50,000 -- the 10,000, 10,000, 10,000
21 credit card payments -- do you have an understanding that when
22 Nexus made those payments, they tied it to a specific bond for
23 payment?

24 A I understand they did that in order to be able to utilize
25 their credit card to pay it.

R. Wells - Cross

1 Q So my question to you is, out of the 236,000 you testified
2 to, do you know what amount of that was similarly for specific
3 bond-breach payments?

4 A It's my understanding that the only amounts that could
5 potentially be processed as such could be that \$50,000. But
6 like I said, I am not -- I'm leaving it up to RLI to apply
7 those payments.

8 Q And do you know what other portion of the funds could
9 be -- could have been paid by Nexus as designated by Mr. Moore
10 for bond-breach invoices?

11 A No, I'm not aware of that.

12 Q And you testified that you were surprised, or that it was
13 inaccurate -- RLI's statement in its brief that as of the time
14 it filed the brief it only had received \$9,282.60 in payments
15 since July 15th, right?

16 A I don't remember if I used the word "surprised," but I
17 think the point is that --

18 Q And looking at -- well, we just saw, for example, the July
19 28th payment of \$8,775 that you reported as being paid on July
20 28th.

21 A Which payment are you referring to again? I'm sorry.

22 Q The \$8,775, the exhibit I just put in front of you from
23 Mr. Moore.

24 A What's your question about it?

25 Q In making that testimony, you're including, for example,

R. Wells - Cross

1 the \$8,775 as payments made in July, right?

2 A Yes, because from our perspective those funds left our
3 account on the 28th of July.

4 Q But you don't know -- you have no information to contest
5 the fact that RLI did not receive that payment until August
6 2nd, correct?

7 A Well, let's see. Any information that I have about how
8 long it takes to process an ACH is just general rule of thumb.

9 Q Well, you have Mr. Moore's payment confirmation sheet. It
10 wasn't forwarded to RLI till August 2nd, right? It's right in
11 front of you.

12 A Right.

13 Q So you have no reason to dispute that RLI didn't receive
14 that payment until August 2nd, right?

15 A No, but that is a side of the transaction that I am not
16 privy to. I am privy to when the funds leave our account
17 and --

18 Q And the same holds true with any other payment; you don't
19 know the date RLI received those payments, correct?

20 A I am not in the RLI accounting department. And so no, I
21 am not privy to that information.

22 Q You testified that there were -- that there is difficulty
23 making payments when there were reviews of the data system?

24 A By reviews are you referring to the bilateral reviews?

25 Q Right.

R. Wells - Cross

1 A That is correct.

2 Q And didn't you testify that there were payments made on
3 July 30th?

4 A Yes.

5 Q And do you understand there was a bilateral review on July
6 30th?

7 A I did not recollect that specific date off the top of my
8 head, but I'm --

9 Q Okay. And are you aware that RLI advised that there is a
10 \$75,000 cap per transaction for credit card payment?

11 A 75,000?

12 Q Right.

13 A I am not aware of that advice from RLI, no.

14 Q Where did you -- strike that.

15 MS. KATSANTONIS: I have nothing further.

16 THE COURT: Thank you, Ms. Katsantonis. Do you want
17 to introduce this one as 4?

18 MS. KATSANTONIS: Yes, Your Honor.

19 THE COURT: It will be so received.

20 (Plaintiff's Exhibit 4 admitted.)

21 Ms. Johnson, do you have any follow-up for your
22 witness, Ms. Wells?

23 MS. JOHNSON: Yes, I do, Your Honor.

24 THE COURT: We'll do that. Then we'll take a brief
25 facilities recess, and then we will see what other evidence the

R. Wells - Redirect

1 parties want to put on. Go ahead.

2 MS. JOHNSON: Thank you.

3 REDIRECT EXAMINATION

4 BY MS. JOHNSON:

5 Q Ms. Wells, is it true that just because payment is
6 initiated on a date, that it could be received on another date?

7 A I'm sorry, I didn't understand the last part of your
8 question. Would you please repeat that?

9 Q Just because there is a receipt sent for a payment, does
10 that necessarily mean that that's the date the payment gets
11 out?

12 A That is correct. Up until this point, these receipts have
13 been created manually. And anything that's created manually is
14 subject to error.

15 Q Okay. So would the July 7th, then -- I believe it was
16 what we were harping on -- was that an error?

17 A Is the -- which one, the 8,775?

18 Q Yes, ma'am.

19 A I did not -- I'm reviewing this documentation after the
20 fact. I can't speak to whether it was an error or not.

21 Q You were asked a number of questions by opposing counsel
22 with regard to other entities not connected to Nexus. Do you
23 have knowledge that, for example, Homes is not connected to
24 Nexus?

25 A I do have knowledge that Homes is not.

R. Wells - Redirect

1 Q Okay. And what about this Executive Investigation
2 company, is that under Nexus's umbrella?

3 A No, it is not.

4 Q And what about Global -- there was reference as to
5 Global -- is that under Nexus's umbrella?

6 A No, it is not.

7 Q Is that something that can be classified as a public
8 relations firm?

9 A Would you repeat that?

10 Q What is Global classified? Is it a public relations firm?

11 A It's my understanding that Global is a production company.

12 Q So is that a form of marketing?

13 A No. That has more to do with the production of media,
14 production in the terms of motion picture or --

15 Q Okay. But it's not connected with Nexus Services is the
16 point?

17 A That's correct. It is not.

18 Q Okay. Now, with regards to the payment solutions offered,
19 you're offering to the Court that a solution to this business
20 issue is to have direct payments go out with a hands-off
21 approach, correct?

22 A Would you repeat that question? There was some there that
23 cut out. Sorry.

24 Q So you were mentioning earlier a solution to this Court to
25 ensure consistent payment, correct?

R. Wells - Redirect

1 A Correct.

2 Q Okay. And that would be -- because the Court is looking
3 for a solution today. And that would be the daily transfers?

4 A Would you repeat the last part of that, please?

5 Q That would be the daily transfers?

6 A The daily funding from the merchant account, yes.

7 Q Okay. Perfect. Perfect. Now, with regard to the overall
8 health of the company, would this be one solution which would
9 ensure the overall health of the company?

10 A I'm sorry, would you repeat that question? It cut out.

11 Q Would this solution that's being offered from a financial
12 perspective on your end, would that preserve the health of
13 Nexus Service?

14 A In a sense, yes, it would, to the extent that we would be
15 able to maintain the autonomy to make some of these business
16 and strategic decisions.

17 MS. JOHNSON: I'll pass the witness.

18 THE COURT: Okay. Any additional questions for
19 Ms. Wells?

20 MS. KATSANTONIS: No, Your Honor.

21 THE COURT: Thank you, Ms. Wells. Appreciate it.

22 We're going to take a ten-minute facilities recess.

23 Then we'll see what additional witnesses you have,

24 Mr. Anderson. We'll stand in recess for about ten minutes.

25 (Whereupon, a recess was taken.)

M. Donovan - Direct

1 THE COURT: Call your next witness.

2 MR. ANDERSON: Thank you, Your Honor. I believe he's
3 on the Zoom call; the defense would like to call Michael
4 Moore -- or excuse me, Michael Donovan.

5 THE CLERK: Who are you calling? I'm sorry.

6 MR. ANDERSON: Michael Donovan.

7 THE CLERK: I don't see his video on. There you are.
8 His camera wasn't on yet. There you are.

9 Do you want me to swear him in?

10 THE COURT: Yes, swear him in, please.

11 MICHAEL DONOVAN, DEFENSE WITNESS, SWORN

12 DIRECT EXAMINATION

13 BY MR. ANDERSON:

14 Q Michael, you have heard a lot of testimony today. And
15 you've testified in these matters here before. The issue we're
16 here today to discuss is what we do going forward.

17 Why haven't you made payments up until most recently the
18 June and July dates?

19 A Thank you. And I wanted to start by apologizing to the
20 Court if there is any inference or -- (inaudible).

21 THE REPORTER: I'm sorry, I'm having trouble hearing.

22 MR. ANDERSON: Mike, if you could speak a little
23 clearer or perhaps closer to your microphone.

24 THE COURT: And if the other two folks on the call
25 could please mute your Zoom; that way the connection with

M. Donovan - Direct

1 Mr. Donovan might be a little better, because I had a hard time
2 understanding what he said.

3 THE WITNESS: I'm sorry, Your Honor. Is this any
4 better?

5 THE COURT: Yes.

6 THE WITNESS: Okay. Perfect. First of all, I wanted
7 to apologize to the Court. I don't want the Court to think
8 that I disrespected or that I have contempt for it. I -- when
9 we got the judgment in this, we were in the middle of a
10 pandemic. Our revenues had sharply -- not just because of the
11 pandemic, but because of the -- before that because of the
12 Trump Administration's immigration policies. Our -- it's
13 important to note, Mr. Anderson, our monthly revenues were
14 \$4 million. So it is a significant amount less than that.
15 Most companies are not able to survive a revenue fall that
16 fast.

17 THE REPORTER: I'm sorry, I'm having trouble hearing.
18 It's fading in and out.

19 BY MR. ANDERSON:

20 Q Mike, as you're rocking back and forth --

21 A I'm so sorry.

22 Q -- you're coming in and out. So if you could maybe lean
23 in. I think we maybe missed the last 30 seconds of what you
24 said.

25 A Sure. It's an awkward way to sit. Can you hear me?

M. Donovan - Direct

1 Q Yes.

2 A Perfect. I think --

3 THE COURT: The question was: Why haven't you made
4 the payments before now?

5 THE WITNESS: I understand. So, Your Honor, when we
6 got the judgment, we did not have the money to make the 2.2
7 million. And I told the lawyers that there was no way we could
8 do it. We began to save money to start paying. We wanted to
9 pay a portion of the collateral. We also -- (inaudible).

10 THE COURT: I'm sorry. We can't understand what
11 you're saying.

12 THE WITNESS: Okay. So we wanted -- what we were
13 trying to do --

14 MR. ANDERSON: Mike, do you have earbuds or an
15 earpiece you can put in?

16 THE WITNESS: Yeah. Can you give me just a minute?
17 I'm sorry.

18 THE COURT: Sure. Take your time. This happens like
19 every Zoom call.

20 THE WITNESS: I'm so sorry, Judge. Seriously, I'm so
21 sorry.

22 THE COURT: It's okay.

23 (Pause.)

24 THE WITNESS: Mr. Anderson, I joined by phone. I can
25 speak into my phone. So if the Court will let me, I'll mute my

M. Donovan - Direct

1 mic.

2 MR. ANDERSON: We'll give you a second to connect
3 through your phone.

4 THE WITNESS: It's connecting.

5 THE CLERK: Give me one second to admit you. It's
6 going to be a huge echo. So the second that I admit your
7 phone, make sure you mute, please.

8 THE WITNESS: Thank you so much.

9 THE CLERK: Can you hear me okay?

10 THE WITNESS: I can hear you. Can you hear me?

11 THE CLERK: Yes.

12 THE WITNESS: Okay. So the question was, why haven't
13 we paid? And as I was saying, we knew that we were going to
14 have an issue making the payment of the 2.2 million. It was
15 Christmastime. We had just had several staffing reductions. I
16 was trying to put money aside for RLI to pay down the NTDs,
17 first of all, and then to do the collateral. On Christmas
18 Eve -- a couple of weeks before Christmas we notified RLI that
19 we would be making payments. RLI -- we sent -- I think we sent
20 RLI a copy of one of the checks and -- (inaudible).

21 THE REPORTER: I'm sorry.

22 THE CLERK: Mr. Donovan, I'm sorry. So as you're
23 moving around and moving the phone, you're coming in and out on
24 your audio. I'm so sorry, but it's hard for the court reporter
25 to get a good record.

M. Donovan - Direct

1 THE WITNESS: No. No. I'm the one who is sorry, and
2 hopefully this is better.

3 THE CLERK: Thank you.

4 THE WITNESS: Thank you.

5 So on December 24th, we had two accounts. That is
6 also a payroll day. So that's the day we -- that's the payroll
7 we weren't able to make because RLI had capsized our accounts.

8 Now, in the middle of a pandemic and with all the
9 other litigation we have going on, going from four million to
10 one million a month is difficult. But going from four million
11 to one million, and then having hundreds of thousands of
12 dollars seized after you've made the payments is impossible.
13 And so we -- we very nearly went out of business. I mean, we
14 lost all of our operating money in an instant. I'm happy and
15 proud of my team that we're still here. And we are --
16 (inaudible) -- an opportunity to grow our business once again,
17 and we're doing that. But there was a real low, and this
18 unfortunately coincides around that timing.

19 I am committed to -- I believe in the rule of law. I
20 believe in civil rights. I fight for them. I believe in the
21 power of the federal courts. I seek redress in them. So I
22 obviously believe in following a court order. And the most
23 important thing I can do right now is to get this paid.

24 So we hired a CFO who isn't just a new person, but
25 someone who had worked with us in the past. And I said, I want

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1 you to take this all over, pick your systems, pull the systems,
2 and let's go. We have an opportunity legitimately with a 20
3 percent revenue to finish this injunctive relief demand within
4 ten months. I want to do that. I want to comply with the
5 court order, just like I wanted to comply with the court order
6 when I brought FCS to the table. And the judge may remember
7 RLI didn't like FCS because they weren't A+ rated, but they're
8 Treasury listed. And as Magistrate Judge Ballou can attest
9 to -- he was on the call -- RLI never called them back. So I
10 brought them a replacement surety. They wouldn't deal with
11 that.

12 The one thing I would say that I hope the Court will
13 consider is if the Court is considering the appointment of a
14 receiver, to please consider first ordering RLI with perhaps
15 the Special Master or perhaps Magistrate Judge Ballou, to
16 actually go through the process of attempting to allow us to
17 replace the surety, because I have a surety company ready to
18 go. And they -- they have -- and you heard it from Mr. Grycz
19 in the November/October hearing -- November hearing. He had
20 concerns about whether FCS or American had a proper credit
21 rating with AM Best. The government bases who it works on --
22 federal surety based on whether they're on the Treasury list.
23 And this company was. So if the Court -- and this is why I'm
24 so concerned. I get why the Court is mad at me. If I were the
25 Court, I'd be mad at me too, because outside of understanding

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1 the specifics of what's going on, it does look disrespectful.
2 But I'm afraid the Court doesn't see the attempts that I have
3 made. We brought a new surety to the table not once, but
4 twice, and they refused to work with them. I offered them
5 deeds of trust on all of the properties that I own with my
6 partner and LLC. I said, You know what? You know, they wanted
7 all the information about the properties. I said, Good. I'll
8 give you more than information on the properties; I'll give you
9 deeds of trust on the properties. And by the way, that's
10 almost \$2 million. And they said, No, they're worthless.
11 Well, they weren't worthless when you spent \$50,000 of my money
12 to go after them. I'm offering you a deed of trust.

13 So I'm just concerned. I mean, I -- I'm prepared to
14 commit 20 percent of our topline revenue. I'm prepared to give
15 Mr. Peroutka access to our CFO -- RLI access to our CFO, but
16 they have to be willing -- when we talk about frustrating
17 payments, that's just the beginning. They frustrated our
18 attempt to provide an alternative surety. They frustrated our
19 attempt to provide other types of collateral. So if we're
20 really talking about a receiver, first we need to talk about
21 forcing RLI to allow us to replace them, because I would be
22 thrilled to replace RLI at this point, as you can imagine.

23 Long answer. Sorry.

24 BY MR. ANDERSON:

25 Q In terms of moving into if we -- if the judge were to

M. Donovan - Direct

1 order a receiver, you've stated in the past that you have other
2 sureties. How would those other sureties react, primarily
3 focused on your other bond principals?

4 A So we have -- with most sureties, we have a general
5 indemnity agreement like we did with RLI, like with American,
6 for example. So one agreement covers all of our work. But
7 with other sureties, like FCS, we have agreements per
8 individual. And those bond agreements are specific in that
9 they have a solvency clause for the indemnitor. And so if the
10 agent of the company believes that the indemnitor cannot stand
11 behind its bonds anymore, then they expressly reserve the right
12 to cancel the bond and remand the party. I have reached out to
13 find out what a receivership would look like, and I -- you
14 know, I think at least one of the companies will consider it an
15 act of insolvency, and they will probably -- not probably; they
16 will take negative action against immigrants. Will they be
17 able to lock up 10,000 immigrants? No. Probably not. They'll
18 have to get the permission from the manager of the local
19 immigration office. So maybe they get permission five out of
20 ten times, and 5,000 people get -- it's a terrifying thing.

21 And by the way -- and Mr. Anderson, it's important you
22 understand -- this argument is meaningless. There is no
23 justification to violating a court order. To come into this
24 Court and say, I have a right to violate a court order because
25 I'm helping these people is stupid. That's not what I'm

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1 saying. What I am saying is that a unique series of
2 circumstances -- some this Court is very aware of because the
3 entire world is, and some not so much -- we went into an
4 incredibly difficult time as a company, and we almost expired.
5 We didn't. We lived to find another day. And you know why we
6 lived to find another day? Because of the client's --
7 (inaudible).

8 THE REPORTER: I'm sorry, you need to slow down a
9 little bit, and I'm having trouble hearing you.

10 THE WITNESS: I'm so sorry. So we knew that we
11 needed to find a solution, and I think we did. We are in a
12 place now where our revenues are growing slowly, but they're
13 growing. And I think that we are in a place where we can
14 finish. We came into this court order within ten months. I
15 would like to do it today. And Judge, I promise you, as much
16 as I love coming to see you, I do not like this, and I would
17 pay it in a heartbeat, if I could, to avoid a hearing like
18 this. I don't have that money together, but I do -- and I
19 think we've proven it -- 20 percent daily will get us there.
20 And if Your Honor could -- it's just -- it's -- you can't --
21 you can't send somebody a check, and then they seize the money
22 in your account, and then they cash your check, and they run to
23 the court and say you bounced a check. Now, how am I supposed
24 to -- when you talk about difficulty in facilitating payments,
25 yes, we've had difficulty facilitating payments. If the Court

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1 would lean on RLI to accept our 20 percent daily, then we will
2 no longer have any issue with payments, and RLI will no longer
3 have issue with payments. And as our revenues grow, Judge, so
4 will those payments. And it could be decidedly less than ten
5 months if our revenue continues to grow. But based on a static
6 revenue, we should get it done in ten months. And I think
7 that, given the circumstances that led to the first several
8 months of noncompliance, as I've explained -- and I apologize
9 for it -- right now we have an opportunity to accomplish this.
10 And the Court can help us because we need the help.

11 You know, when we -- the Court often says, Nexus is
12 hiding things; Nexus is obfuscating. And I get that, because
13 this whole litigation started because I wouldn't give them
14 records, right? I didn't give them records because I thought
15 they were going to leak the information. I didn't think it was
16 going to be secure. And specifically, I thought they were
17 going to go try to round up their bond principals. They did
18 not do that. And Your Honor predicted that they wouldn't do
19 it, and they didn't do it. You were right. But we have had
20 multiple issues with the protective order violations. I
21 oftentimes think that I would have been better off if I had
22 just given it all to them and then sued them when they messed
23 up. And so I do have regrets in this case, big ones. But at
24 the end of the day, I have a judgment. It's on appeal. I'm
25 going to pay it. If I win the appeal, they'll give me my money

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1 back. And at this point I just want to be able to make the
2 payments without having to fight against the people I'm paying
3 to be able to pay them.

4 Q Mike, let's get back on track in terms of the payment plan
5 going forward. Can you explain that in better detail so the
6 Court understands what you're proposing?

7 A Yeah. So we have a merchant account deposit. And that
8 merchant account deposit is the majority of our revenue. I
9 think that Rebecca might have gotten -- and she was answering
10 some questions from opposing counsel. She had talked about
11 program payments. Program payments are the majority of our
12 revenue. That's from Libre by Nexus. We also have new client
13 payments. That's a much smaller amount of revenue because the
14 number of new clients has been smaller. There is a processing
15 fee payment. These are all from Libre clients, but -- and it's
16 Libre revenue. But they're listed differently. So all of that
17 would be captured in the deposit.

18 And now to Ms. Katsantonis's point: It is only stuff
19 that's run by credit card. But we are -- you know, almost all
20 of our transactions are run by credit card. And I'm happy to
21 have Ms. Wells total our cash and money order transactions on a
22 weekly basis and up the amount at the end of the week to match
23 the 20 percent, because I want to be -- that would add a little
24 bit of hands on, but it would still give 30 deposits a month
25 where they don't have to worry about it and they're getting the

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1 money. And then the Court doesn't have to worry about
2 compliance, because the money is going to them on a daily
3 basis. If we make more money, they get more money, and it's
4 automatic. We can't even stop it, because once we give them
5 access to this account, we can't -- we would -- I would have to
6 change the percent, which RLI would know. So if we had a high
7 revenue day, it's not like I could modify the numbers or any
8 other thing they might think I'll do. So this is -- they might
9 not realize it; this is a fantastic solution for them if they
10 really want me to satisfy the judgment and their true goal
11 isn't receivership. If they really want the judgment
12 satisfied, this is the way to do it.

13 And we've demonstrated we could get it done. We
14 demonstrated -- I told my team, work -- make sure that we get
15 compliance. And it felt like between July 15th and now we've
16 been fighting with RLI to be able to be compliant. It's
17 frustrating. The payment thing would be so easy. I was
18 shocked when they wouldn't do it. And I hope we can do it,
19 because I think that's the way to get it done. And honestly,
20 it's more efficient than a receiver. You're going to have
21 someone come in who doesn't know this business. They're going
22 to have to learn this business. They're going to have
23 sureties, rescinding contracts, and suing us. And the chances
24 of our company surviving that are about as much as our company
25 surviving December. We survived December, but I'm concerned.

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1 So I think that this is the right -- but I do believe the
2 daily deposit is the right way to go. I think it's the best
3 way to be able to give RLI the confidence that they're going to
4 get the payments, and give the Court the confidence that this
5 order is going to be satisfied.

6 Q Mike, earlier today we had discussed the topic of
7 garnishments. To your knowledge, have there been any
8 additional garnishments made this month in particular?

9 A Yeah, I was really surprised. About 30 minutes ago I got
10 a service -- a notice of service of process for my registered
11 agent. And RLI filed a garnishment last week which was just
12 served today. I thought that was odd, because I believe they
13 testified that they haven't garnished since May, but I have a
14 garnishment for American Bank today. That was served on me
15 today.

16 Q Is there anything else you'd like to add to the
17 proceedings today?

18 A Only that I would say that I have a great deal of respect
19 for this Court, and I particularly have a great deal of respect
20 for this -- for you, Judge Urbanski. I remember a particular
21 civil rights case. But you -- I think you're fair. I think
22 that you're intense. I think that you're serious. I hope that
23 you understand I'm being serious, too. I want to resolve this.
24 I want to get out of business with RLI, to be honest with you.
25 And I would ask you to help me do that. Help me. And look,

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1 Judge, give me 30 days and tell them they have to cooperate.

2 If I could just say this: When we came up to the issue
3 of -- of the -- when we -- hold on one second, guys. I need to
4 get a drink of water. I'm sorry.

5 Sorry. Okay. So when we came up with the idea of getting
6 a new surety, I spoke to several sureties. They told me that
7 RLI would have to identify the book of business, request that
8 the government authorize a transfer of that book of business,
9 and identify to the government the name of the surety that's
10 authorized for the transfer. At that point the government then
11 begins to speak to the party that has nothing to do with those
12 bonds.

13 RLI demanded -- and Your Honor can go back to Judge Ballou
14 to confirm this -- RLI demanded that we -- or not we, that the
15 new surety contact ICE to get approval for the bond transfer.
16 Now, Your Honor, how could they do that? They're not their
17 bonds. They don't have any way of identifying the bonds, other
18 than the name of an indemnitor and the name of an insurance
19 company. And no DHS person is going to give them -- is going
20 to do anything with that.

21 So what RLI needs to do is RLI needs to call and let the
22 government know that they've approved the transfer of this book
23 of business. I will get the new surety to evaluate the book of
24 business. And something tells me that any of the sureties we
25 work with would jump up and down for 20 percent of our daily

M. Donovan - Cross

1 revenue, don't you think? So I don't think I have a problem
2 getting this done, and I have two sureties that are interested.
3 But they are not going to commit until they can evaluate the
4 book of business. And when RLI refuses to even identify it,
5 what do you think that does to a potential surety? It doesn't
6 give them confidence. I had the president -- or the vice
7 president of American Surety tell me that he couldn't do it
8 anymore because he was concerned that after they transferred
9 liability, notices might actually be -- accidentally be sent to
10 RLI. And given the fact that they won't even identify the book
11 of business, he doesn't believe that they would share
12 information with him, and that created a risk concern.

13 They're actively working against my ability to do this,
14 Judge. And I don't know if that's on accident or on purpose.
15 But I do think that every single person in this courtroom,
16 whether they know it or not, would be slightly better in life
17 if these two companies didn't do business together anymore.

18 MR. ANDERSON: Well, on that note, Michael, I'll turn
19 it over to Ms. Katsantonis for cross-examination.

20 CROSS-EXAMINATION

21 BY MS. KATSANTONIS:

22 Q Good afternoon, Mr. Donovan.

23 THE COURT: Mr. Anderson, I forgot to ask you -- you
24 took your mask off -- are you vaccinated as well?

25 MR. ANDERSON: Yes, sir.

M. Donovan - Cross

1 THE COURT: I've been meaning to ask everybody, and I
2 forgot.

3 BY MS. KATSANTONIS:

4 Q Mr. Donovan, isn't it true that Nexus made no payments of
5 collateral on December 1st, 2020 to RLI?

6 A Is it true that we did not make payments of collateral on
7 December 1st, 2020 to RLI; is that what you're asking?

8 Q Right. Isn't that true?

9 A December -- I mean, I don't remember. I don't have
10 encyclopedic knowledge of what happened in December, but I
11 could consult records. I would have to.

12 Q So do you -- is it your testimony that you don't know
13 whether or not Nexus made any payment to RLI for collateral in
14 December of 2020?

15 A No. Your question was on December 1st.

16 Q Okay. How about any time --

17 A Your question was on December 1st.

18 Q How about any time in December?

19 A I know that we paid breaches, and we were beginning to
20 pay -- we had began the process of paying the NTDs. We were
21 not at that point paying collateral, because we still had a
22 balance -- we had a balance in the NTDs, and I wanted to retire
23 that first.

24 Q Are you talking -- when you say NTDs, you're talking
25 invoice payments for past due bond breaches?

M. Donovan - Cross

1 A Those, as you know, we've always been paying. In
2 December, I marked NTDs for payment. These were part of the
3 order I guess under A.2 -- which, you know, has been further
4 delineated under A.2, which was the payment for collateral.

5 Q What payments did you make in December of 2020
6 specifically?

7 A Well, we told you that when we sent you the check -- when
8 we sent you the first check, you seized the money in the
9 account. So I will -- and I'm not sure which -- which client
10 that was, but I can certainly find out and get it to you. But
11 we sent you a check. It may have been a breach -- it may have
12 been a breach -- it may have been an NTD. I'm not sure. But
13 we had planned to pay something on the order of like \$180,000,
14 and we ended up having \$300,000 taken out of our account. And
15 one of the checks that we sent, you guys tried to cash.

16 Q Mr. Donovan, have you seen the Special Master reports in
17 this case?

18 A I have.

19 Q And the Special Master reported in one of its earlier
20 reports that Nexus did not make any collateral payments until
21 May 27th of 2021 in the amount of \$4,500. Did you see that?

22 A Yeah, that's right.

23 Q And Nexus did not contest that report, correct?

24 A No.

25 Q And Nexus made no collateral payments in June, correct?

M. Donovan - Cross

1 A I assume that's true. I know that we began in earnest in
2 July.

3 Q In January, February, March, April, May, June of 2021, was
4 Nexus making payments to Think Global?

5 A We began -- I don't remember exactly when we began making
6 payments to Think Global. But yes, we did coordinate with
7 Think Global to do some of our media work, PR work, all of our
8 social media PR, which is most of our PR.

9 Q And was Nexus making payments to Fixify Solutions?

10 A Yes. They're our IT department. You may remember
11 Mr. Billings. He's helped you on several of the bilateral
12 reviews.

13 Q And was Nexus making payments to Fangistics?

14 A I believe we have made payments to Fangistics, yes.

15 Q What about Executive Investigation Consultants?

16 A Yes. They provide security for our campus, and so yes, of
17 course.

18 Q And SKDKnickerbocker, were payments being made to them as
19 well?

20 A Yes. Now, that is where Think Global replaced --
21 SKDKnickerbocker and WYE were replaced by Think Global. And
22 Think Global is actually a lot cheaper.

23 Q And you made payments to WYE Communication as well,
24 correct?

25 A That's the sister company to SKDKnickerbocker.

M. Donovan - Cross

1 Q And with regard to properties -- you just made some
2 testimony -- did you ever identify specifically any properties
3 to RLI as potential collateral?

4 A Well, of course. I mean, RLI has our property list. I
5 referred to the property list. I've produced it ad nauseam.
6 You have referenced it in your filings.

7 Q Are you referencing the property list that's the
8 properties in your balance sheets?

9 A I'm referencing the property subject to the motion in
10 the -- the motion for -- the other motion for sanctions where
11 you have defined a list of properties that you say we own and
12 that we say -- or you say Nexus owns. I pointed out to counsel
13 we had pulled a response to an Augusta County tax subpoena in
14 2016, and we were able to find the documents about those
15 properties. I had told you that they were owned by LSE. I
16 didn't --

17 Q Mr. Donovan --
18 (Unreportable crosstalk).

19 A -- as I indicated, I offered them for collateral.

20 Q Mr. Donovan, do you have any document or anything where
21 you advised RLI of which real estate properties you were
22 willing to post as collateral?

23 A Those conversations were handled by my counsel, Carl
24 Anderson, and you should probably ask him. But let me make it
25 clear: Any property that I have an interest in,

M. Donovan - Cross

1 Ms. Katsantonis, I will happily give the value of its equity to
2 your client in a deed of trust until such time as this is done.

3 Q Are the properties in your balance sheet all listed as a
4 zero value?

5 A Well, they're zero value to Nexus when we became aware --
6 I mean, so we had always put them -- we have -- we rent our --

7 Q Just yes or no. Mr. Donovan, just yes or no, in your
8 records that you've produced, don't you assign a value of zero
9 in your balance sheets for all of those properties?

10 A I am not sure; but if we do, it is probably because they
11 are owned by LSE. So they are of zero value to Nexus is what
12 I'm guessing that means.

13 Q Do you maintain copies of all the RLI bonds?

14 A Paper copies?

15 Q One way or another, do you have a copy of all the bonds
16 issued by RLI on behalf of Nexus program participants?

17 A What we have is in Capsule, and you have access to that
18 data.

19 Q So you do have copies of the bonds, correct?

20 A Only ones that are in Capsule, and you have access to that
21 data. There is no room where we keep copies of bonds.

22 Q And you have records of bond breaches and the status of
23 the bonds, correct?

24 A No. So we streamlined the way we handled this. You may
25 remember from my testimony and deposition that I lugged like 20

M. Donovan - Cross

1 binders with me. And after that we decided that we would never
2 do that again, and that the last thing I ever wanted to see in
3 my office was a room full of binders. So we keep it now in a
4 shared spreadsheet, and it's electronic so that people can
5 access it anywhere. Our breach managers can get it. It's
6 easier.

7 Q So you maintain information with regard to which bonds are
8 RLI bonds and the status of those bonds that you could provide
9 to any potential substitute surety, right?

10 A It's actually not that easy. So --

11 Q I just want to know: Do you have the records?

12 A No. No, we do not, ma'am. We do not fully. Not enough
13 to be able to give the government confidence to be able to
14 authorize a new surety, take a book of business. That would be
15 required to happen from the surety that is relinquishing the
16 business. It is the only one that can identify the four
17 corners of that business.

18 Q And where is that information derived from?

19 A Other than common sense, it is -- I mean, how would --

20 Q You haven't --

21 (Unreportable crosstalk).

22 A -- how would they have the ability to identify for the
23 government a book of business they do not own? All you have to
24 do --

25 Q You haven't --

M. Donovan - Cross

1 (Unreportable crosstalk).

2 A -- the government --

3 (Unreportable crosstalk).

4 Q Mr. Donovan, you know which bonds RLI issued, right? And
5 you haven't spoken to DHS either, correct?

6 A I want you to -- Ms. Katsantonis, think about what you're
7 saying. Do I know all the bonds that RLI posted? First of
8 all, of course not. Secondly, I already told you that the
9 records that we have are not consistent enough. There are some
10 tags on Capsule that weren't entered. So no, I do not have it,
11 Ms. Katsantonis.

12 Q Mr. --

13 A I don't understand why your client just won't do it.

14 Q Mr. Donovan --

15 A What's so hard about it?

16 Q Isn't the only entity that can cancel a bond the
17 Department of Homeland Security?

18 A Of course.

19 Q So no other surety can cancel a bond, correct?

20 A But your GIA says I can replace the surety, and you well
21 know that --

22 Q Mr. Donovan, I'm asking you a direct and specific question
23 only.

24 A And I answered it directly.

25 Q And then in the last six months from July 15th to August

M. Donovan - Cross

1 9th, isn't it true that Nexus only made payments for eight days
2 allegedly of receipts, correct?

3 A No. We paid 20 percent of our revenue. And that is -- we
4 can get that laid out for the Court. I believe it's in a
5 motion that was filed this morning. I know the Court hasn't
6 had a chance to look at that. We can certainly -- I can have
7 Mr. Anderson (inaudible).

8 Q My question is, you only -- to the extent you forwarded
9 any payments from July 15th, they were -- number one, you
10 didn't identify what the revenue was per day in those payments,
11 correct?

12 A I think that the -- but you have access to that on a daily
13 basis. I don't understand.

14 Q Mr. Donovan, isn't it true that the only payments made
15 from July 15th until yesterday were for eight days: July 4th,
16 5th, 6th, 7th, 8th, 10th, 11th and 12th, totaling 56,000, that
17 were marked as 20 percent of revenue?

18 A No. I think what is happening, I'm guessing that's when
19 you're receiving the payments. But these are ACH payments.
20 And it's important to understand -- Judge, yes, we missed
21 dates. RLI knew we were going to miss dates because we told
22 them that every time we did a bilateral review, we had to shut
23 the finance system down. Then they asked for three of them.
24 We can't send them out on the weekends, as Mr. Anderson
25 explained. We are at 5:30 in a hearing about taking a company

M. Donovan - Cross

1 that serves immigrants and putting it into receivership. And
2 the question isn't: Did you pay 20 percent, but did you pay it
3 often enough? There is nothing that will ever satisfy RLI. So
4 please --

5 Q You're backdating the payments, right, Mr. Donovan?

6 A No. What do you mean, backdating the payments?

7 Q You're backdating --

8 A Why would I do that?

9 Q -- for receipts on July --

10 A I don't -- Ms. Katsantonis, if I paid you 20 percent of my
11 revenue yesterday, I'd show up and say I did what I was
12 supposed to do.

13 Q My question --

14 A I do --

15 (Unreportable crosstalk.)

16 THE REPORTER: I can only take one person at a time.

17 THE COURT: I think I have heard enough about when
18 the payments were made, and how many payments were made, and
19 all of that, okay? I have heard -- that is sort of at this
20 point beside the point, and the Court doesn't -- I mean, I know
21 what payments have been made. Mr. St. Ours talked to me about
22 it. We heard Ms. Wells talk about it. We heard Mr. Grycz talk
23 about it. I know what things have been paid, so we don't need
24 to argue about when they've been made and whether they were
25 made on the day they said they were. All that is beside the

M. Donovan - Cross

1 point.

2 The real point here is: What's the appropriate
3 remedy for Nexus's failure to pay the collateral security as
4 ordered by the Court? That's the question. What's the
5 appropriate remedy? And RLI is saying it must be a receiver or
6 appoint an independent third party. And Nexus is saying, hold
7 on, we are committed to paying 20 percent of our -- of our
8 revenue. And so, that's where we are. That's what's relevant.
9 So let's stick to something that's relevant, Ms. Katsantonis.

10 THE WITNESS: Oh, I thought that was a question I was
11 going to be able to respond to.

12 THE COURT: No, that's not a question. That's the
13 issue I'm dealing with.

14 THE WITNESS: Gotcha. I have an idea.

15 THE COURT: What's your idea, Mr. Donovan?

16 THE WITNESS: I believe that Your Honor said -- when
17 we started this hearing you said, How do I not hold the party
18 in contempt? And I've been really thinking about that. You
19 know, the reality is, what happened to us in December -- and I
20 literally didn't know if I was going -- if Nexus was going to
21 survive until March, April. So when all that happened -- I
22 mean, none of it matters. At the end of the day, I think that
23 the Court can find that -- you could hold me in contempt. You
24 could hold Nexus in contempt and you could assess us a fine and
25 you could give us -- give them the attorneys' fees they're

M. Donovan - Cross

1 already going to get anyway, which doesn't really make any
2 sense. But at the end of the day, I don't have a problem with
3 acknowledging that we have made a significant failure before
4 the Court, because we have. And I don't have a problem
5 apologizing profusely and taking responsibility for it, because
6 at the end of the day everything is my responsibility in this
7 organization. But I know that we've got a way out. I think
8 that it's the right way out. I think if Your Honor believes
9 that this is contemptuous conduct and that there should be a
10 finding of contempt, I understand. And I'm saddened by that,
11 and I totally get it. If that's the case, I ask Your Honor's
12 contempt penalty to not put the lives of hundreds of thousands
13 of immigrants -- or tens of thousands of immigrants at risk;
14 and more importantly, not capsize a company that will do more
15 harm than good not just to Nexus, but also to RLI, because RLI
16 has been enjoying the fact that Nexus has stood in front of it
17 for bond breaches for a very long period of time. And that's
18 going to stop happening if a receiver is appointed and there's
19 an insolvency determination. That doesn't help them, nor does
20 it help us.

21 So I'm hopeful that the Court will take this apology
22 and also understand that I'm willing to be held accountable and
23 do whatever needs to be done. But Judge, we've got a solution
24 here. We've proven it. Let's implement it and let's get this
25 judgment retired, and then please also make them give me the

M. Donovan - Cross

1 opportunity for a new surety. Give me 30 days and make them
2 identify their book of business. Your Honor, that's not an
3 unreasonable request.

4 THE COURT: Ms. Katsantonis -- thank you,
5 Mr. Donovan.

6 Ms. Katsantonis, what other additional questions do
7 you have for Mr. Donovan?

8 BY MS. KATSANTONIS:

9 Q Mr. Donovan, isn't it true that if you made no payments to
10 Think Global, it would not affect the immigration business?

11 A That is actually not true, no. Think Global does a lot of
12 video work related to the immigrant community. If you go to
13 our website, all the video access there, which include the
14 immigrants that were saved from the Trump deportation machine
15 are there. In fact, we've done a new advent of digital media,
16 and we've been using that on Facebook for marketing purposes.
17 So I do actually count the increase in revenue directly to our
18 working with Think Global.

19 Q Where --

20 A Also I will tell you --

21 Q -- are the revenues in Think Global realized?

22 A Right. It's realized in new clients.

23 Q In where?

24 A New clients. So the marketing dollars then reach people
25 who need help, and then they acquire the services of Nexus,

M. Donovan - Cross

1 providing a new client and creating new revenue opportunity.

2 Now, I never think about --

3 Q Are there payments made for people to your Unleashed
4 streamline platform? Aren't there payments made so that
5 somebody could view -- is it \$10 a month?

6 A So Unleashed Entertainment does have a subscription
7 service and --

8 Q And where are those revenues recorded?

9 A They're recorded in that company, and they're not a lot.
10 It's a very -- it's a -- it's a -- it's a company -- we
11 launched it -- the business guy that I was working with
12 launched it as a subscriber platform, but we're actually moving
13 into an advertising base platform, because subscription
14 platforms are just very difficult to manage. And our work is
15 much more focused on our marketing efforts. So we're doing --
16 like, for example, Nexus's function is about our clients. We
17 did a show about a guy named Ed Love [phonetic] in New York who
18 was in juvenile solitary confinement. We sued and got New York
19 to have to let him out. So we did --

20 Q Mr. Donovan, aren't the invoices for the system sent to
21 Libre by Nexus and to you personally?

22 A That's right, yeah. "The System" is the show that we did
23 the highlight on Ed Love. We have --

24 Q And then there's NJWeedman, that's another show that's
25 billed to you, Libre by Nexus, right?

M. Donovan - Cross

1 A Yeah.

2 (Unreportable crosstalk.)

3 I'm sorry, ma'am.

4 THE REPORTER: I'm sorry, I didn't hear the question.

5 I'm going to need you both to speak one at a time because I

6 can't get you both at the same time.

7 BY MS. KATSANTONIS:

8 Q So NJWeedman, that's another show that's being billed to

9 you for the production costs, right?

10 A That is a show involving Edward Forchion, a Nexus client,

11 yes.

12 Q And it's being billed to Libre by Nexus, correct?

13 A It is a marketing opportunity, and we will receive

14 incredible -- and listen --

15 Q And being -- I just want yes or no -- is "Being Zach Cruz"

16 another --

17 A A Nexus client, yes.

18 Q No. It's another show that's being billed to --

19 A That's right.

20 Q -- Libre by Nexus? And that's --

21 A It's a show about --

22 THE REPORTER: I'm sorry, one at a time, please.

23 BY MS. KATSANTONIS:

24 Q That's a reality show of your and Mr. Moore's home life,

25 correct?

M. Donovan - Cross

1 A No. That's a reality show about a Nexus client, who also
2 happens to live in our home. But it's important to understand
3 that the -- our marketing -- if you look at our marketing, if
4 you Google us, the only positive thing you ever see are stories
5 about our clients. So one of the things I've learned over the
6 years of doing this is that from a marketing perspective, tell
7 your clients' stories. Other people want to hear them.
8 They'll identify with it, and --

9 Q Thank you, Mr. Donovan.

10 A Of course. Yes.

11 MS. KATSANTONIS: Mr. Anderson, I don't know the
12 quick way, but we have some copies of invoices from "The
13 System" to Libre by Nexus to Mike Donovan. Do you want to
14 stipulate that these came out of your records?

15 MR. ANDERSON: Subject to verification, I have no
16 problem with stipulating.

17 THE COURT: Do you want to mark those as an exhibit
18 that's been stipulated to, Ms. Katsantonis? I think it would
19 be Number 5.

20 MS. KATSANTONIS: Yes, Your Honor.

21 THE COURT: Okay. And what -- just tell me what
22 these are, if you will.

23 MS. KATSANTONIS: These are some -- just a handful of
24 invoices from Think Global, who is the media production for
25 these reality TV shows. And they're being billed to Libre by

M. Donovan - Cross

1 Nexus, and Mr. Donovan is being paid by Nexus.

2 THE COURT: Thank you for that. All right. Go
3 ahead.

4 (Plaintiff's Exhibit 5 marked and admitted.)

5 MS. KATSANTONIS: I have nothing further, Your Honor.

6 THE COURT: Okay. Mr. Anderson, any further
7 examination of your client, sir?

8 MR. ANDERSON: No redirect, Your Honor.

9 THE COURT: Okay. Do you have any additional
10 evidence, Mr. Anderson?

11 MR. ANDERSON: No, Your Honor.

12 THE COURT: Okay. Thank you all. Does RLI have any
13 additional evidence that you would like to submit today?

14 MS. KATSANTONIS: Your Honor, another document to
15 stipulate is the KPI report that shows the revenues as reported
16 by Nexus.

17 THE COURT: I'm happy to receive that, if you want to
18 mark it as Exhibit 6, if the defendants are going to stipulate
19 to that. If you don't want to, you don't have to. But if they
20 want to put the KPI document in for revenues, Mr. Donovan has
21 already testified to it -- well, Ms. Wells testified to it.

22 MR. ANDERSON: She testified to the KPI, Your Honor.

23 THE COURT: She testified to KPI, but she testified
24 as to what the monthly revenue was, 1.2 million.

25 MR. ANDERSON: Well, this is --

M. Donovan - Cross

1 THE COURT: I don't know what this is. You tell me
2 what this is and whether you're willing to stipulate to it.

3 MS. KATSANTONIS: I'll ask -- let me ask Mr. Donovan
4 a few questions in that regard.

5 BY MS. KATSANTONIS:

6 Q Mr. Donovan, does Nexus generate Libre by Nexus, a KPI
7 report?

8 A We used to.

9 Q And in the productions to RLI, has Nexus produced KPI
10 reports?

11 A We have produced KPI reports, yes, when we use them.

12 Q And do the KPI reports reflect, for example, for January
13 2021 revenue of 1,789,899 for the month of June?

14 A I'm not looking at it, but I would assume that's probably
15 true.

16 Q And February, 1,344,396?

17 A Sounds right.

18 Q March, 1 --

19 (Unreportable crosstalk).

20 A Yeah, it's in the --

21 THE REPORTER: I'm sorry, can you repeat the number?

22 BY MS. KATSANTONIS:

23 Q 1,603,926.

24 A Sounds like that averages out to Rebecca's number.

25 Q Do you have any reason to dispute that Nexus has received

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1 revenues from October '20 to today of approximately 16 million?

2 A I don't know off the top of my head, but I don't have any
3 reason to think that you're lying about that.

4 MS. KATSANTONIS: I'm going to move for the admission
5 of the KPI report, Your Honor.

6 THE COURT: Mr. Anderson, any objection?

7 MR. ANDERSON: No objection.

8 THE COURT: It will be received without objection as
9 Plaintiff's Exhibit 6. Thank you, Ms. Katsantonis.

10 (Plaintiff's Exhibit 6 marked and admitted.)

11 MS. KATSANTONIS: Thank you, Your Honor.

12 THE COURT: Okay. Any additional evidence from RLI?

13 MS. KATSANTONIS: I have nothing else, Your Honor.

14 THE COURT: Okay. Mr. Anderson, anything else from
15 you?

16 MR. ANDERSON: No, nothing.

17 THE COURT: Okay. I have something else. I have one
18 question -- one question. And it's for RLI. And here's the
19 question -- and it's just as obvious as the nose on my face,
20 which is pretty obvious -- if they are willing to pay you 20
21 percent of their revenues on a going-forward basis, what more
22 could a receiver do, except perhaps pose some problem for the
23 continued existence of the business? What more could a
24 receiver do than pay you 20 percent of revenues?

25 MS. KATSANTONIS: Your Honor, they -- Nexus through

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1 these proceedings has provided zero evidence of its inability
2 to comply with the order. They're asking this Court to modify
3 its order. And I'm going to tell you I have many reasons as to
4 why that's not sufficient. But they are asking this Court to
5 modify this order. They have received \$16 million since this
6 order. They have held records from us. They changed the
7 databases. That is important, Your Honor, their lack of
8 forthrightness with regard to the books and records, because
9 they're hiding their money and they're hiding information from
10 us, okay? And it's important because I showed Your Honor just
11 in StampLi that we were only allowed to sit with the Special
12 Master for a few hours. And I did a sort. I saw, just trying
13 to pick a couple of them off the top, \$1.7 million paid in
14 January through June for unnecessary expenses, or to affiliated
15 companies, or insiders.

16 So absolutely no is the answer to that, Your Honor.
17 They have not provided evidence. They have said -- you have no
18 evidence in this record whatsoever of an inability to pay.
19 They do not dispute that they received revenues of \$16 million.
20 They do not dispute that they've made payments to all of these
21 other entities -- Think Global, etc.

22 And it reminded me of a case that I had seen, which
23 was *SEC versus Bowler*. It's a Fourth Circuit case, 1970, where
24 the Court remanded for the appointment of a receiver, "as
25 district court is vested with inherent equitable power to

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1 appoint a trustee receiver, and should not have left culpable
2 parties in control."

3 And that really rang true to me. And that's
4 exactly --

5 THE COURT: What's the cite on that case?

6 MS. KATSANTONIS: That is 427 F.2d 190, pages 197
7 through 198. And we cited to it in ECF 647, page 5 of 18.

8 You know, so I thought of that. And I also thought
9 of another case we cited which just says, "Federal courts
10 possess inherent authority derived from the constitution to
11 enforce their judgments. This authority naturally arises as a
12 means of ensuring that the judicial power conferred on this
13 judiciary by Article III is not rendered inadequate or
14 incomplete by disregard of its orders." And that is *Travelers*
15 *Insurance versus Hash Management* case, 173 F.R.D. 150.

16 That's where we are, Your Honor. There is no excuse.
17 The law is that they have to comply with the order or they're
18 in contempt. There is no dispute that they're in contempt.
19 And then they have to show that they made good faith in making
20 all reasonable efforts to comply. It cannot be said that they
21 made all reasonable efforts to comply. Just on the collateral
22 alone, the fact that we received a minor \$4,500 on May 27th,
23 months after your order, goes straight to that issue. The fact
24 that you had to go to these great lengths to extract the -- as
25 of yesterday, \$107,000, meanwhile hundreds of thousands of

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1 dollars are going to other unnecessary business expenses,
2 related companies, round number transfers to Richard Moore.
3 They are in contempt, and they need -- we need a receiver to be
4 appointed. The time has come, Your Honor. You gave them a
5 last-ditch opportunity. And what that showed is they paid, you
6 know, I think it was \$56,000 from July 15th of 20 percent
7 revenues. They somehow, after all these meetings with the
8 Special Master where they don't disclose active databases that
9 they're making payments and check payments out of -- we have to
10 identify them on July 15th -- and then after your court's
11 order, they identified three more databases we had never even
12 heard of before. They are in contempt. And this Court's
13 orders should -- they should be admonished. The court orders
14 should be followed and a receiver should be appointed.

15 I think we've provided the Court with plenty of case
16 law to substantiate that. I'm happy to go through that, Your
17 Honor, but nothing we said --

18 THE COURT: I understand I have the power to appoint
19 a receiver, okay? I understand that. But is it the best thing
20 to do in this case?

21 MS. KATSANTONIS: Absolutely, Your Honor. We cannot
22 stand by month after month and allow Nexus to continue to
23 squander what revenue it's getting. We now know from today's
24 testimony that they're not even showing us all the books and
25 records of Homes and Homes' revenue. What is this 20 percent?

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1 We don't have any accounting of that. We don't even have
2 confidence that we've got all of their -- they said for months
3 that Lightspeed is where the revenues are. Then we said, Well,
4 there's missing reports. And we kept asking the Special
5 Master, you know, there's these missing reports. And the
6 Special Master said, Yeah, as a matter of fact, there is. And
7 finally months later they're like, Oh, we weren't using
8 Lightspeed from, you know, October to February. We had another
9 system. But we're not using that anymore, American Spirit.
10 And they didn't even identify that virtual database until
11 July 6, I believe, okay?

12 So we have no confidence in what this amorphous 20
13 percent is. Ms. Wells admitted that -- when she was talking
14 about it -- she was only talking about certain credit card
15 payments. I'm not even sure where all of that is being managed
16 and collected. And we don't think it's sufficient. What's to
17 say they can't -- in their financial records, they show that
18 they make a 76 profit or more every month from those payments.
19 So, you know, we're not asking the Court to come in, and the
20 receiver not to pay their payroll or not to pay necessary
21 expenses. We're just saying they cannot be in control anymore
22 to do business as usual, and go make payments for reality TV
23 shows, or for alleged security, or any other extraneous
24 payments that are unnecessary to the business.

25 And the Court has issued an order. They provided no

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1 evidence that they can't comply. And to say that they can come
2 in with their settlement offer and modify this Court's order
3 with no evidence whatsoever -- in fact, an acknowledgment of at
4 least the revenue that they have shown us that they reported of
5 16 million. And I will say from the virtual database it looked
6 like there was more revenue. They're showing like two million
7 plus moving in and out of the accounts a month, and checks.

8 So we don't have any basis to trust in what a 20
9 percent would or wouldn't be, or whether that's adequate or
10 not. It could be 40. It could be 50. Who knows, Your Honor?
11 So it's not an appropriate remedy, and we ask that the Court
12 appoint the receiver.

13 THE COURT: Thank you, Ms. Katsantonis.

14 Mr. Anderson, anything you'd like to say in response,
15 sir?

16 MR. ANDERSON: I believe Juliana Johnson would like
17 to address.

18 THE COURT: I'm happy to hear from you.

19 MS. JOHNSON: Thank you, Your Honor. Can you hear me
20 okay?

21 THE COURT: Yes.

22 MS. JOHNSON: Okay. And just to respond to opposing
23 counsel's closing remarks, no revenue at all whatsoever has
24 been squandered. Rather, almost a quarter million from RLI --
25 since July of this year.

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1 Virtual databases? We're sitting here speculating on
2 revenue in virtual databases? Virtual databases have no
3 checks, Your Honor. This is just another method of which
4 RLI -- (inaudible) --

5 THE REPORTER: I'm sorry, I missed what she said
6 after, "this is just another method of which RLI" -- and you
7 cut out.

8 THE COURT: She said that's just another method of
9 what RLI, and then you cut out. So could you start from there?

10 MS. JOHNSON: It's just another method of what RLI
11 does not understand with regard to Nexus Services. It is
12 another way to put something there that simply is not, Your
13 Honor. Virtual databases have no -- (inaudible) -- getting new
14 software for payment processes is not done for nefarious
15 purposes. They had to stop using Lightspeed because of the
16 seizure that took place in December because they lost their
17 credit card processor. Did RLI acknowledge this? No, because
18 we're on a witch hunt. Accusations of hiding funds. More like
19 RLI's bad faith and frustrating the many offers of payments to
20 make this right.

21 Mr. Donovan testified from the heart today. He
22 testified on many business solutions that he has given, many
23 business solutions that have been offered time and time again
24 since this Court has made its ruling. RLI is bent more on --
25 (inaudible) -- rather than a solution, Your Honor. RLI has

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1 failed to understand this company. We've explained to them
2 time and time again. RLI uses 1970 case law in a 2021
3 technology world that does not apply, because the implications
4 of a business demise in 1970 with regards to a public company
5 is not applicable to a company that survives on technology,
6 business partner relationships that survive on technology, and
7 is also a private company, Your Honor.

8 RLI again talks about (inaudible) -- but in cross
9 examination with Ms. Wells, she spent a significant amount of
10 the time going after a 1 percent *de minimus* revenue that
11 Ms. Wells could not even name, and ignores the 99 percent of
12 revenue that is Libre that goes right into NetSuite. That
13 revenue --

14 THE REPORTER: I'm sorry.

15 THE COURT: That goes right into the?

16 MS. JOHNSON: 20 percent of the daily revenue that
17 Nexus has offered to pay to satisfy these judgments in as
18 little as ten months.

19 The issues are simple, Your Honor, today. They're
20 very simple. It's about compliance, and it's about whether or
21 not we should have a receiver. We should not have a receiver.
22 The ramifications of having a receiver would destroy this
23 business. It would cause insolvency clauses with other
24 sureties that Nexus has relationships with far larger than the
25 relationship it ever had with the historic -- (inaudible) --

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1 thousands of immigrants -- (inaudible) -- and guess what?
2 Their bonds would be available for a large competitor. Nexus
3 would be gone. The people that Nexus employs would be gone,
4 because the insolvent clauses include that if Nexus goes into
5 receivership, this is what happens.

6 So we have to sit back and we have to ask ourselves:
7 Why has RLI balked on receiving so many payments, so many
8 different payment methods? For example, it's like saying to
9 somebody that you've got to drive five miles today, and then
10 tomorrow saying you've got to drive five miles tomorrow, but in
11 the middle of that drive you set up roadblocks. That is what
12 Nexus Services has been going through with RLI. Nexus Services
13 wants a method in which to prove to this Court that it has
14 grown as a company, that it has accepted this Court's judgment.
15 But it still deserves to have its chance to fight for the very
16 thing that Nexus Services is based on; that is, human rights --
17 (inaudible) -- disregard to humanity (inaudible) on a
18 consistent basis.

19 Nexus has a new CFO. She's a CPA. This is complying
20 with all of -- *prima facie* -- on Nexus to grow up as a company
21 to be able to meet this Court's demands. Nexus executives have
22 been loosening the reins to give Ms. Wells the authority to do
23 her thing, Your Honor. Even Ms. Wells stated in her testimony
24 that Nexus has been overly compliant -- even excited -- acting
25 in ways that she hasn't seen anybody act with excitement to

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1 take on whatever it is she suggests. And in the four months
2 that she's been CFO, look at what's happened. The payments
3 have been coming in, almost a quarter million. Now, since
4 she's come into this role, things have cleared up a lot. And
5 in looking at it from that angle, yes, we can talk about the
6 50,000 that's applied to bonds. But here's one thing that we
7 keep leaving out: Nexus gave discretion in good faith to RLI
8 to apply whatever money it received from Nexus however it
9 chooses. I probably would have advised them differently than
10 that, but they are transparent. They are wanting to fix this.

11 RLI wants to talk about things that Nexus didn't do.
12 Let's talk about what they did do, Your Honor. They hired
13 Rebecca Wells, all her years of experience, attention to
14 detail. That's good faith. Surviving a company during a COVID
15 pandemic, that's good faith. Having to do whatever they could
16 to keep their employees paid when bank accounts were seized to
17 the tune of over \$300,000, when RLI knew there were checks
18 coming, and after these bank accounts were seized and payroll
19 was in danger with all these employees at Christmastime, they
20 went and ran to the Court and said it was contempt for cashing
21 checks they knew they couldn't cash because they already seized
22 the accounts. That's shady.

23 Additionally, RLI maintains the bond from them.
24 Well, this is where my experience comes into play, Your Honor.
25 The appellant is the bondsman. That file belongs to the

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1 bondsman. BIA, through I Form 292, has created an avenue of
2 relief for invalid debts. Invalid debt (inaudible) state that
3 if a notice to appear is not properly noticed, then anything
4 that comes after that -- and another case -- (inaudible) --
5 further exemplify that, that anything that comes after it,
6 including by revocation of a bond as invalid, the bondsman has
7 a duty to validate; otherwise, the bondsman doesn't stay in
8 business. We can't turn over files that do not belong to us,
9 period. The appellant is the bondsman. And that has been
10 explained to RLI as well. They don't understand the
11 immigration process.

12 Nexus has bent over backwards to work with RLI for
13 which OPC has (inaudible) -- that does not to me sound like a
14 company that's hiding something when they owe something.
15 They're giving their own resources to help come to a solution.

16 Second, I believe we offered a very profitable
17 solution: 20 percent of daily revenue, a hands-off approach.
18 Everybody has got a personal problem with either this executive
19 or that executive, or what this person said or what that person
20 said, or when an email was dated. But if we had this hands-off
21 approach and we're willing to do this, and it offers us an
22 avenue for the company to not go into receivership and not lose
23 our sureties, then why wouldn't we do that? Why wouldn't this
24 Court do that? It is the most equitable solution that we could
25 come to. There would be no more need for fighting. It could

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1 be set up rather quickly. And the debts and the judgments,
2 they'd be paid off.

3 But when we offer these solutions to RLI, they're
4 turned down with a flat no. Flat no. Just like when we
5 offered the property to cover one of the judgments -- the mere
6 equity in that property could have covered it -- turned down.
7 Was told -- we were told that our property was worthless.

8 We're asking this Court today to adopt our proposed
9 solution to end this litigious nightmare, to not -- (inaudible)
10 -- but rather a proponent for a solution to this business.

11 With that, Your Honor, I close, and I respectfully ask that a
12 receiver not be appointed in this case, and that we be allowed
13 to do the direct payment in the manner that Ms. Wells
14 described. And in this case we can come back in 60 days, Your
15 Honor, come back and see how it works. It makes no difference
16 whether there is a contempt finding today or in 60 days. The
17 result will still be the same. What if we're onto something?
18 What if we can actually show that this solution works? We save
19 immigrants from being remanded, we save unjust enrichment from
20 competitors -- which is what I think is the real motive here --
21 we save a company, and RLI gets their money. It's a win-win,
22 Your Honor. Thank you.

23 THE COURT: Ms. Katsantonis, this is your motion, so
24 I'll give you the last word.

25 MS. KATSANTONIS: Thank you, Your Honor.

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1 THE COURT: Mr. Harris, would you like to say
2 something, Mr. Harris?

3 MR. HARRIS: I would love to say something, but I
4 don't want to keep you all around. I'll defer to
5 Ms. Katsantonis.

6 MS. KATSANTONIS: When counsel was speaking, all I
7 could think of is: Justice delayed is justice denied. And
8 that's what's been happening and that's what continues to
9 happen. That's what they're asking for. Your Honor, they've
10 had their chance. They had their opportunity. You've given it
11 to them over and over again. This 20 percent -- again, a
12 modification of your order -- no evidence whatsoever as to --

13 THE COURT: I can't modify my order.

14 MS. KATSANTONIS: I know, Your Honor.

15 THE COURT: I can't.

16 MS. KATSANTONIS: I know, Your Honor.

17 THE COURT: It's on appeal to the Fourth Circuit.

18 MS. KATSANTONIS: Exactly.

19 THE COURT: I can't do it. The question is whether
20 or not I hold them in contempt today, or 60 days from now, or
21 whenever. I can't modify my order.

22 MS. KATSANTONIS: Exactly. And where were those good
23 faith efforts? Where were those payments? Nothing stopped
24 them January, February, March, April, May, June, July. I
25 mean --

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1 THE COURT: Those were kind of tough months, though,
2 January, February, and March.

3 MS. KATSANTONIS: They were getting paid --

4 THE COURT: That's the middle -- that's when the
5 pandemic was in its throes.

6 MS. KATSANTONIS: They were getting 1.8 million in
7 January under the KPI.

8 THE COURT: I'll look at the KPI.

9 MS. KATSANTONIS: It was their highest revenue month,
10 actually, in January from the KPI report. So it's -- I believe
11 it was 1.8 million. It was higher than the rest of the months.

12 So we've seen the transfer of the monies going out to
13 other unrelated entities. They cannot -- the fact that they
14 have the -- that they say that we would balk at receiving
15 payments is -- it's truly laughable. They could have made
16 payments any number of way -- check, money order, wire
17 transfer. They didn't do it. They cannot be rewarded for
18 their contempt, Your Honor.

19 They provided no evidence of any negative
20 ramifications with the appointment of a receiver. They have
21 presented no evidence to the Court with regard to that, and how
22 that would impact them. We've seen this whole play before:
23 Oh, the new CFO is going to save the day. You'll remember Greg
24 Solsrud, right? That was during the preliminary injunction.
25 We've seen this playbook over and over again. And truly, it is

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1 unfair to RLI to continue down this road. It truly is, Your
2 Honor. It's been almost ten months since your order. You've
3 seen what they've done. Everybody admits as of yesterday they
4 paid \$107,000. Your Honor, I mean, alone this screams for the
5 appointment of a receiver. And we know -- we don't have all
6 the records, but we know they've admitted -- Mr. Donovan
7 admitted the payments -- so did Ms. Wells -- to some of these
8 other entities during all of this time frame, hundreds of
9 thousands of dollars. I saw \$1.7 million. Who knows what
10 other payments there are in there.

11 There's absolutely no evidence that they could not
12 comply with your order. And they have provided no evidence
13 today, and they've -- all they're asking is for you to modify
14 their order. And they provided no evidence as to the harm of
15 the receiver, whereas the harm is patently clear with regard to
16 RLI. Thank you, Your Honor.

17 THE COURT: Okay. I guess, Mr. St. Ours, you weren't
18 needed after all this afternoon, but we're glad that you were
19 with us.

20 Does the Special Master have anything he wants to add
21 before we wrap up?

22 SPECIAL MASTER: Well, one thing I want to -- a
23 couple of things I do want to comment on.

24 THE COURT: Mr. St. Ours, go to the podium.

25 SPECIAL MASTER: Just a couple of things. Can you

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1 hear me okay?

2 THE REPORTER: Yes.

3 SPECIAL MASTER: We heard an explanation as to why
4 there were no payments through April. So it's not that there's
5 no excuse. It's whether or not it's acceptable. Okay. And
6 again, this is -- again, it kind of shows -- I see an issue on
7 each side. I'm appointed. I believe the first conference call
8 was April 15. And I -- and we weren't very far into it and I'm
9 thinking -- it's like what you said today: Why don't you just
10 pay what you can while you can? I mean, okay, you're still
11 not -- you're still not in compliance. But on that call I'm
12 thinking, If they make a payment, where is it going to go?

13 So I didn't develop it. But by the second call --
14 which I believe was like April 22, April 21 -- you know, in
15 other words -- but -- so to me, it was double pronged: Pay
16 what you can; and RLI, I know you're not under -- the order
17 doesn't say you have to do this. I can't tell you to do this.
18 But just would you, if they -- and there is no agreement --
19 would you just confirm that you'll put it towards collateral
20 security, not towards the second? I articulated very clear --
21 and on the back of my notes -- and I see that we didn't get to
22 that point. I get that confirmation back. It's in my -- it's
23 in a letter that I wrote on May 18. I can finally confirm that
24 far. When I think back, there is the \$4,500. It was a \$2,500
25 payment. So now -- so here I've got RLI that I'm thinking,

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1 they don't have to. They have every right to garnish. I can't
2 stop it. What --

3 THE COURT: Well, they can't garnish for the
4 collateral security, but they can garnish for the attorneys'
5 fees and the judgment, which was not stayed.

6 SPECIAL MASTER: But now I don't have an explanation
7 why -- it's now late May. A payment comes. Another payment
8 comes. But what I don't have an explanation is why there's no
9 payments in the month of June. So you see, I see this on both
10 sides. And, you know, that echoes forward even to today. I
11 hear about the merchant account and I'm thinking, Well, why not
12 accept payment that way?

13 THE COURT: I'm sorry, what did you say?

14 SPECIAL MASTER: The merchant account, direct
15 payment, it just makes sense. It doesn't mean they -- not give
16 up the 2.4 in receiver. Don't misunderstand me. I heard
17 Ms. Katsantonis, and I thought she articulated well. But it's
18 almost -- here I'm listening to the testimony and I'm thinking,
19 My golly, I'm hearing -- now I'm beginning to understand why it
20 wasn't -- I knew it wasn't efficient. By the way, I saw those
21 emails. And I understood people do backdate. But when I look
22 at the -- I don't know why -- it doesn't make sense to me -- it
23 would be nefarious -- because they do come -- the emails don't
24 come until after July 15. So I don't fault Nexus for that. I
25 can't explain why that's like that. I've never seen these

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1 emails before.

2 The other thing is I -- I have difficulty hearing it
3 not once, but I believe three different times, 107,000 term.

4 Judge, I want to say what's in my report -- and I gave

5 Mr. Harris this -- so it kind of bugged me that I kept hearing

6 107 on closing argument. I heard it a little earlier. My --

7 this ultimate report was really very much -- it was belated.

8 And I actually wrote Mr. Harris this. It's okay. Better late

9 than never. At least I've got some information. And what's

10 remarkable was I'm hearing Ms. Wells testify the 50,000 is not

11 for collateral source, that it's part of the 236. But the

12 numbers are so close to where I'm learning over the weekend the

13 only thing that I don't have verified is the 70,000. But here

14 we had stuff come in. And when you throw the 70,000 in, you --

15 and the 50, although the 50 is not collateral -- my report is

16 within I want to say -- and I heard about an additional four

17 grand that I just didn't have. When I put all that together,

18 the numbers are within \$9,000. So it just kind of bugged me.

19 The 107,000, yes, I put that in. That's the amount as of

20 Sunday night. RLI needs to say that's all of it. That's just

21 all that we can confirm right now. And we've heard more. And

22 it did not include the 50, which I understood.

23 So I'm just kind of -- I just -- I just felt the

24 need -- you know, we have an equitable remedy, Section A and

25 Section C. The Court cannot modify it. But when I think about

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1 that four plus weeks just not that they had to, but just to
2 get -- we will put it towards, and now the merchant account.

3 By the way, in no sense do I think -- I'm not saying
4 there is any unclean hands on the part of the parties. I'm not
5 going to say that. I don't think there was anything nefarious
6 on Nexus, although I am frustrated that even on August 5 we
7 don't see Stampli. We may have data for Stampli, but we don't
8 see Stampli. We don't see Airbase. It's just -- what hits in
9 my head is not unclean hands. Not unclean hands. No way.
10 It's something that's much milder. But still -- I don't know
11 if it's Emerson that would say it, but I can just hear that
12 voice booming, "One who seeks equity must do equity." And that
13 doesn't mean the receiver is not appointed, because waiting to
14 hear back for four, four and a half weeks, yes, we will --
15 that's not a big thing in the picture, but it's still a little
16 equity. And this merchant account testimony, I just don't --
17 unless there is something structurally that they can't accept
18 payment by way of this direct payment, it's just the little
19 things.

20 I would love for Mr. Peroutka -- I found him so
21 helpful -- and I don't know if ultimately it would work out,
22 because there may be -- the issues may continue. There are
23 issues with Nexus. But I found it helpful. I think Mr. Harris
24 and -- again, Ms. Katsantonis, I want to say it was the
25 three -- the third, fourth, and fifth bilateral review

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1 Ms. Katsantonis wasn't on. But it was really we -- and when
2 Mr. Donovan was on the call, you know, they were actually
3 talking to one another. And I don't know if that will
4 continue. But the fact that Ms. Wells comes back and says, you
5 know, I did hear about what he said and it's helpful, I mean,
6 hats off to you. And my hat is off to you for acknowledging
7 it.

8 So I just -- oh, one other thing I just wanted to
9 say. Judge, I do not want the implication about a statement --
10 and this is not argument. I took it as a statement. I do not
11 want that implication. We were only allowed to sit for a
12 couple of hours. Judge, on the 21st we cut off for a reason,
13 but not because somebody said, "no more." The 23rd, the 26th,
14 the 30th. The 30th, we did cut off. Mr. Moore had a conflict.
15 But we resumed. And nobody cut off when we resumed that
16 afternoon. And I tentatively scheduled resumption I believe it
17 was August 4. In my head I'm thinking, What am I thinking?
18 How am I ever going to get this report done? And I get it. We
19 didn't do it not because there wasn't a willingness to talk
20 more. If there needed to be a more thorough review, the
21 implication we were only allowed -- the implication we weren't
22 allowed to see everything -- yes, initially, no screenshots.
23 There was a point when Mr. Anderson apparently decided, and
24 that's when we started seeing screenshots. There could have
25 been screenshots of others going back in time. I don't know.

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1 But at least at first, no screenshots. But I don't want the
2 implication anybody cut this off. And the reason we didn't do
3 it was Nexus was not going to agree -- they didn't have to,
4 it's not in the order, at least the way I interpreted it -- of
5 access to the bank, the online bank. So it wasn't a matter
6 that somebody said, Uh-uh, no more in any of these databases.
7 It could have gone longer. So I just -- I just don't want -- I
8 just don't want to have impressions where we don't need them.

9 For all that I've said, Judge, I'm afraid I took too
10 much of the Court's time just on my comments that don't go to
11 the essential issue of whether or not to appoint a receiver or
12 not. And I apologize for that.

13 THE COURT: Thank you, Mr. St. Ours. I appreciate
14 that.

15 Okay. Folks, it's 6:30. We've been going since
16 around 9:30 this morning. I have an order here, an order on
17 the motion that we've been working on. And I'm not going to
18 present it today. I want to think about what I've heard.

19 I want to thank the parties for coming here to
20 Harrisonburg today and spending this time with the Court
21 together again. And I will get an order out soon. We already
22 have a draft. We've been thinking about it and working on it,
23 and I will get an order out on these -- on the motion -- on the
24 issue of the appointment of a receiver under 66 or a person to
25 perform specific acts under 70. I thank you all for helping me

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1 try to understand these issues. And with that, we stand
2 adjourned.

3 (Proceedings concluded, 6:29 p.m.)
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C E R T I F I C A T E

I, Lisa M. Blair, RMR/CRR, Official Court Reporter for the United States District Court for the Western District of Virginia, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a correct transcript of the proceedings reported by me using the stenotype reporting method in conjunction with computer-aided transcription, and that same is a true and correct transcript to the best of my ability and understanding.

I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

/s/ Lisa M. Blair

Date: August 20, 2021